Report to the Hon Michael de Jong Minister of Forests	Minister's Forest and Range PRACTICES ADVISORY COUNCIL (PAC) December, 2003

Purpose:

To present the results of PAC's deliberations regarding the July 2003 draft of regulations supporting the *Forest Planning and Practices Act* (FRPA) and issues concerning FRPA implementation.

Outline of Report:

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Introduction

A. Key recommendations regarding the FRPA regulations

B. Key recommendations regarding FRPA implementation

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Preamble

The focus of the Public Advisory Council's (PAC) work to date has been on the July 2003 drafts of the four (4) Forest and Range Practices Act (FRPA) regulations – Forest Planning and Practices, Range Planning and Practices, Woodlot Licence Planning and Practice, and Invasive Plants. Revisions to the regulations were being prepared while PAC was completing its review of the July 2003 draft. Although PAC did not review any drafts subsequent to the July version, PAC understands the issues it raised were considered as revisions to the regulations were being prepared.

The challenge for PAC was to review a large and complex volume of material with a tight timeline. PAC held three 2-day workshops in one month. In addition, members dedicated additional hours reading, reviewing and understanding the material. Despite all of these efforts, the general feeling of the Council was that it was unable to undertake as comprehensive or thorough a review as it would have liked. Consequently, it is possible that some concerns and issues may have inadvertently been overlooked.

The recommendations presented in this report represent a summary of "overarching" concerns raised by PAC. All of the issues summarized here were discussed, and the key concerns summarized; however no attempt was made to reach full consensus regarding each issue. Since PAC represents a broad range of interests it is important that issues of major concern to any PAC member are brought forward, even though they may not be of equal interest to all other PAC members. Also, given the large number of PAC workshops held in a short time frame, some PAC members found it difficult to attend all workshop sessions and this limited PAC's full consideration of all points of view.

PAC's review of the regulations was premised on the assumption that PAC has an ongoing role to play as the FRPA regime is implemented, including further review, advice and recommendations to the Minister.

Introduction

The main body of this report contains recommendations that reflect "high level" concerns on two aspects of FRPA. The first contains recommendations specific to FRPA regulations, while the second addresses issues and recommendations specific to the implementation of FRPA and the regulations.

Detailed questions and concerns raised by PAC regarding the July 2003 draft of the regulations are summarized in Appendix I. These issues are further analyzed by government staff in the 'one page summaries' attached to this report in Appendix II. The discussion and reporting of issues raised by PAC resulted in the following:

- Some items were addressed by the policy teams working on revisions to the regulations;
- Some form the basis for monitoring and follow-up;
- Some questions have been answered by the policy teams; and
- Some issues were best dealt with via discussions amongst PAC members outside of the PAC meeting format, and will be brought back to PAC table for further consideration.

A. Key recommendations regarding the July 2003 draft FRPA regulations

The following recommendations were identified by PAC as key issues arising from the July 2003 draft FRPA recommendations. They are presented in no particular order of priority. Additional issues raised by PAC may be found in Appendix I and II.

A1. Professional reliance

PAC understands that increased professional accountability is one of government's objectives for the new forest management regime. Thus it is important for the regulations to clearly provide for increased reliance on professionals and commensurate accountability. However, PAC is concerned that the July 2003 draft FRPA regulations do not specify that Forest Stewardship Plans and Site Plans need to be signed by a professional. It also is not clear how professionals will be accountable to the public for the increased responsibility being delegated to them. PAC recommends that the Minister ensure that the mechanisms of professional reliance and accountability are sufficient given the reduced level of oversight inherent in a results based regime. PAC expects the public will seek such assurance.

A2. Understanding and interpretation

PAC has expressed concerns throughout its review regarding the confusion that stems from the fact that some requirements are in the Act while other requirements are in a regulation. Consequently, to understand the 'total requirements' for any resource value requires "bouncing" back and force between the Act and the regulations. Providing clear training material that seamlessly brings together requirements in the Act and regulations will be important to improve clarity and ease of understanding.

A3. Increasing efficiencies and reducing costs

There were a number of key overarching goals for FRPA. These included reduced administration, less paperwork and lower costs, as well as improved efficiencies and functional reporting. Since these factors are cornerstones of FRPA it is important that they be realized, yet there is no mechanism in place that describes their targets. In addition, the notification and reporting section was incomplete in the July 2003 draft regulations so PAC has not had an opportunity to review it and consequently it is not known if efficiencies and costs has been adequately addressed in this context. PAC recommends that the Minister ensure a description of the anticipated cost savings and efficiencies associated with FRPA be prepared, and then the actual results tracked.

A4. Forest Stewardship Plan content requirement

The July 2003 draft Forest Planning and Practices Regulation is not sufficiently specific about the information requirements for Forest Stewardship Plans. These plans are the only approved plans under the FRPA regime under this regulation, so it is very important that they provide adequate information for review and evaluation. PAC recommends that the Minister ensure that the Forest Planning and Practices Regulation require sufficient content and details in Forest Stewardship Plans to provide for meaningful evaluation, public review and comment as well as approval or rejection by a statutory decision-maker.

A5. Maintaining or enhancing environmental standards

Government's stated goal for FPRA is to maintain or enhance the environmental standards present in the Forest Practices Code. PAC recommends that government assess this equivalency to help ensure the Act and regulations maintain or enhance the environmental standards present in the Forest Practices Code, and furthermore makes this assessment publicly available. PAC is concerned that the objectives stated in the July 2003 draft regulations are too general and do not provide the needed detail to evaluate or test equivalency. This is a significant issue for the following reasons:

i. There is not sufficient detail in the objectives set by government to guide the preparation of measurable (and equivalent) results and strategies, consequently Forest Stewardship Plans may not contain results and strategies to adequately protect the values. In some cases, the 'factors' offer more specific guidance, but they do not have to be considered, and would need to be expressed in terms that lead to an enforceable objective.

ii. Decision-makers may not be able to meaningfully assess the results and strategies of alternatives to default standards proposed in Forest Stewardship Plans as part of the plan approval test.

iii. The approval test to be used by decision-makers regarding alternatives to default standards should make it clear whether alternative proposals must "maintain or enhance" the level of protection for non-timber values. If this is not the intent, it will be difficult for government to maintain that the regulations achieve equivalency in terms of environmental standards. Outstanding questions remain regarding the burden of proof in approvals.

iv. PAC is concerned that the range of possible results and strategies in approved Forest Stewardship Plans may be too broad and consequently not provide for equivalent environmental standards. PAC believes that it is in the interest of forest licensees, government, stakeholders and the public to have clarity on this point. Licensees and government agencies both need to know what alternatives will be approvable; other stakeholders and the public need to know that the opportunity for alternative forest practices regimes is not merely a chance to 'opt out' of the Code.

A6. Public input

It is important that the regulations ensure that:

- there is an opportunity for meaningful public input to plans;
- industry adequately considers public comments; and
- designated decision makers have the ability to consider public comment, and industries response as part of the approval test.

PAC recommends the Minister improve the regulations to clearly provide decision-makers with the necessary direction and authority to take public comment into account.

A7. Accountability and responsibility

In a results based regime it is important to be clear about accountability and responsibility. The regulations could be clearer with respect to the consideration of actions by others or natural disasters impacting outcomes. There is a need to recognize the potential interaction of users in affecting outcomes.

A8. Landscape level planning

Landscape level planning must adequately set the stage and context for Forest Stewardship Plans, Woodlot Licence Plans, Range Stewardship Plans and Range Use Plans. If landscape level plans are not complete or do not serve the role of balancing (social, environment and economic) uses, then this role will default to operational plan approvals. PAC thinks that operational plan approval is not the proper place to be making higher level, resource management decisions. PAC is concerned that a lack of guidance to the preparation of a Forest Stewardship Plan could jeopardize the management and protection of some resource values (e.g. scenic and wildlife values), and could lead to higher level resource decisions being made by the FSP. For adequate management of these values to occur landscape level planning must be effective and in place, and resource agencies (MSRM, MWLAP and MOF) must invoke their respective mandates, for example, regarding scenic area and wildlife habitat area designation (also see implementation recommendation #2).

A9. Powers of intervention

The powers of intervention in the FRPA regime are of great consequence in both the regulation of "poor operators" and freeing "good operators" to manage. PAC recommends the regulations include a clear description of the powers of intervention in the FRPA regime. PAC is particularly interested in whether there will be adequate response to the occurrence of an undesired result; and yet sufficient boundaries on powers of intervention such that operators have assurance that they can innovate and manage without undue interference. This question can be addressed by prescribing the "events or circumstances" that will result in an intervention.

A10. Balancing resource objectives

PAC has concerns about whether the objectives set by government for timber and other values will lead to the appropriate balancing (social, environment, economic) of values. For example, PAC is concerned that the use of the qualifying phrase "without unduly reducing the supply of timber from British Columbia's forests" in the objectives for soils, watersheds, riparian, biodiversity, old growth, wildlife and visuals means that timber will "trump" these other values.

Several PAC members support the idea of a timber objective, while some feel that the government's timber objective is found in contractual tenure rights and AAC determinations. Those wanting to see a timber objective are divided on whether or not this objective should only focus on managing timber or include access to timber. PAC is concerned that the Oct 2003 draft timber objective (that was provided to PAC for review) is not workable since it implies the calculation of timber impacts on an area covered by a Forest Stewardship Plan, which may not be appropriate.

If the Range Planning and Practices Regulation has a timber objective, some members of PAC feel the Forest Planning and Practices Regulation should have a forage objective.

Some PAC members also feel the regulations should be designed to move away from a potentially adversarial approach where one resource value is optimized at the expense of other values to a more cooperative approach where resource interests work together to develop stewardship plans.

A11. Occupational health and safety

It is important that FRPA maintain equivalency to the Forest Practices Code regarding occupational health and safety. Compatibility with the *Workers Compensation Act* and regulation are explicitly referenced in regulations under the Forest Practices Code. PAC recommends the Minister consider including an occupational health and safety objective or provision, such as "Protect and enhance occupational health and safety in the workplace, in an effort to ensure the health and safety of workers and general public". The intent would be to maintain the precedence of the *Workers Compensation Act* over FRPA regulations (as per the current Code), and to provide opportunity for Workers Compensation Board, unions and joint health and safety committees to view operational plans for safety considerations where and when appropriate.

B. Key recommendations regarding FRPA Implementation:

The new FRPA regime amounts to a significant cultural shift for those involved in forest management in BC. Successful implementation of this new regime hinges on how well the various parties adapt. In turn, their ability to adapt will be greatly influenced by the adequacy of training, support and resources. Consequently the PAC recommends the Minister:

B1. Training

PAC understands that government is developing a detailed FRPA training plan for delivery this fiscal year to March 31st, 2004. PAC anticipates FRPA implementation training will be an on-going need for a number of years, with the need for training decreasing over time. Therefore, PAC recommends government develop a FRPA implementation training plan that provides for training beyond this fiscal year. The plan should address the training needs of government staff, on-the-ground practitioners, contractors, licensees and resource professionals & technicians. PAC understands that government has funding for FRPA training for fiscal 2003/04 with limited funds expected for fiscal 2004/05. PAC feels it is government's obligation and responsibility to provide training opportunities in 2004/05 as some key clients may not be reached in 2003/04 with intended winter training (e.g. given winter logging activities that are peak in some areas of the province).

B2. Ministries meeting new mandates

PAC recommends that government ensure that agencies are mandated, resourced and organized to meet their responsibilities under the new regime. This is particularly important because under the FRPA regime some values will only be maintained on the land base if certain steps are taken by agencies, such as providing objectives enabled under the regulations for ungulate winter ranges, wildlife habitat areas and scenic areas. Since a number of agencies play key roles in the success of the new forest management regime it is imperative that all of them meet their assigned responsibilities. It is important that the Ministry of Water, Land and Air Protection (MWLAP), the Ministry of Sustainable Resource Management (MSRM) and the Ministry of Forests (MOF) be provided with adequate resources to meet their responsibilities regarding designations under the new regime.

B3. Government core services

Ensure adequate support is provided to implement the FRPA regime, including ministry placement of key people so operational plan approvals are done on a timely basis and "over-the-counter" support is available as needed. This will be particularly critical at the beginning of FRPA implementation.

B4. Supporting innovation

PAC requests the Minister give consideration to establishing a process or mechanism whereby innovation is supported, encouraged and rewarded. This should be done in a collaborative way where close working relationships between various resource interests and users are fostered. A goal of FRPA is to promote innovation, improved working relationships and progress, so there needs to be some way to promote attainment of this goal through positive incentives.

B5. Support mechanisms

Ensure the support mechanisms (or guidelines) needed to guide implementation of the regulations are in place. Support mechanisms or guidelines can include non-legal advice provided by government and non-government including associations, licensees and academia. These may include policy and procedures, best management practices, handbooks, and non-legal objectives and strategies in cabinet approved land use plans.

Support mechanisms are particularly important given that the role of compliance and enforcement under FRPA will require heighten skill levels. For example, a compliance and enforcement (C&E) program being developed by MWLAP for range needs discussion with stakeholders regarding what to measure; how to measure; how to interpret the results; and how these results will be used in C&E action. In sum,

- level of skill will need to increase with C&E given the outcome nature of FRPA,
- there needs to be a increased understanding between those preparing results and strategies in plans and those enforcing the plans, and
- further to B4 above, there needs to be rewards for innovation and collaboration to augment C&E penalties.

B6. Monitoring and managing change

PAC acknowledges that implementation of the FRPA regime must be monitored and that, over time, follow-up will be required as part of a managed change process. It will be important to revise the Act and Regulations as experience is gained. In that regard, PAC recommends that the government reserve space on the legislative agenda for possible FRPA amendments in the Spring 2004 and subsequent sessions. An effective monitoring program should be developed to track both stakeholder interests and the results on the ground. The key aspects to consider are:

- funding and staffing of monitoring,
- development of a monitoring plan,
- use of the original goals of FRPA as a set of key performance measures, and
- whether innovation and collaboration that balances resource values where resource interests work together are being realized..

PAC is interested, in this regard, to review government's intended effectiveness evaluation program.

B7. Communication

PAC recommends the Minister address the need to communicate (explain) the FRPA regime to the public and stakeholders – provincially, nationally and internationally.

Appendix I: Table of concerns/issues (PAC ISSUE TRACKING)

- by Topic (Note: Issue may be listed under more than one topic area)

PRACTICES ADVISORY COUNCIL COMPONENT					GOVERNMENT COMPONENT		
Ref. #	**Source**	**Reg. Ref.**	**Issue / Concern**	**Type of Concern**	**Policy Team Response**	**Action**	**Recommendation**
	General FRPA Reg Issues:						
1.	July 3/03-Minutes Flagged Issue #9		"Localized Objectives"-Woodlot/Range Regs (C&E?)	Appropriate Reg Mechanism		Responded	
2.	Sept. 3/4 Wshop	FPPR S.6, 9, 20, 22. 33, 63, 73, and 88	Pulling the Factors into the Objectives themselves	Appropriate Reg Mechanism			
3.	Sept. 3/4 Wshop	FPPR S. 8, 19, 21, 28.1, 32, 62, 72 RPPR S. 6 WPPR S. 5	Consistency of wording of objectives for same values between regulations (Forest Planning & Practices, Range and Woodlot Regs.)	Logic / consistency		Monitor/ follow-up required	
4.	Sept. 3/4 Wshop		General unifying Goal or Objective Statement for Forest Planning & Practices Reg.	Appropriate Reg Mechanism		Responded	
5.	Sept. 17/18 Wshop	Sec. 93	Reciprocal considerations (Range Act, Woodlot Act, Land Act wrt Other Resource Users.	Logic / consistency		Responded	
6.	Sept. 17/18 Wshop		PAC Mid-Term Discussion: Future Access Management – need to address "integrated use" management planning	Appropriate Reg Mechanism		Longer term	
7.	Sept. 17/18 Wshop	All Regs	Mid-Term PAC Discussion: The appropriate and consistent role and use of Regs., Acts	Logic / consistency		Longer term	
	OHS Safety Issues:						

8.	Jul 3/03 – Minutes Flagged Issue #4	FPPR S. 84-95.1, 101	OHS Safety- DDM Plan approval	Interpretation / clarity / definition	Linked to response Discussion Forum July 30th Action #1	Responded	
9.	July 30/03- Action #2		OHS Safety wrt contractual clauses in cutting permits/road permits	Interpretation / clarity / definition	see Discussion Forum-e-mail response from Terje Vold	Responded	
10.	Sept. 3/4 Wshop	FPPR S. 84-95, 101	Trigger needed for FSP design to ensure in compliance with OHS laws	Appropriate Reg Mechanism		Responded	
11.	Sept. 17/18 Wshop	FPPR Part 6	WCB/OHS/Union Notification Requirements wrt Safety	Appropriate Reg Mechanism		Responded	
	Tree Gene Resource Issues:						
12.	July 30/03- Action #24	FPPR S. 27	Tree Gene Resource Standards	Appropriate Reg Mechanism	see Discussion Forum-e-mail response from Terje Vold dated Aug 1st	Responded	
	Timber / Forest Health:						
13.	Sept 3/4 Wshop	FPPR S. 19 & 21 WPPR S. 5	Objectives - lack of Timber Objective	Appropriate Reg Mechanism		Responded	
14.	Sept. 17/18 Wshop	FPPR Part 2	Timber Objective – Concern raised wrt no obj. for timber				Dup #13
15.	Sept 3/4 Wshop	FPPR S. 1	Forest Health/Timber Health - definitions required	Interpretation / clarity / definition		Monitor/ follow-up required	
	Wildlife Issues:						
16.	July 30/03- Action #12	FPPR S. 29, 30, WPPR S. 35, 36 RPPR S. 28, 29	Status report on UWR and WHA legal objectives	Interpretation / clarity / definition	see Discussion Forum-e-mail response from Rodger Stewart dated Aug 25th	Monitor/ follow-up required	
17.	Sept 3/4 Wshop	RPPR S. 28, 29	Wildlife objective - wording still not finalized	Appropriate Reg Mechanism		Responded	
18.	Sept. 3/4 Wshop	FPPR S. 28.1 (?) RPPR S.6	Generally, need to consider forage for wildlife - not just cattle	Appropriate Reg Mechanism		Responded	
19.	Sept. 17/18 Wshop	Sec. 28.1 (2)(a)	Wildlife-Issue of an Order locate under Div. 1 rather than Div. 2?	Appropriate Reg Mechanism		Responded	
	Ungulate Winter Range Issues:						

20.	July 30/03-Action #11	FRPA S. 149.1 FPPR S. 30	MOU re UWR	Interpretation / clarity / definition	see Discussion Forum-e-mail response from Terje Vold dated Aug 10th	Responded	
21.	July 30/03-Action #12	FPPR S. 29, 30, WPPR S. 35, 36 RPPR S. 28, 29	Status report on UWR and WHA legal objectives		see Discussion Forum-e-mail response from Rodger Stewart dated Aug 25th		Dup #16
	Forage Issues:						
22.	Sept. ¾ Wshop	FPPR S. 28.1 (?) RPPR S. 6	Need to consider forage for wildlife – not just cattle				Dup #18
23.	Sept. 17/18 Wshop	RPPR S. 25	Forage – Objective Statement Review for clarity	Interpretation / clarity / definition		?	
	Range Issues:						
24.	July 3/03-Minutes Flagged Issue #6	RPPR S. 5	Range/Who may do Stewartship Plans?	Interpretation / clarity / definition		?	
25.	July 30/03-Action #20	FRPA S. 47 RPPR S. 8 & 9 FPPR S. 93	Legislative gaps wrt invasive plants	Appropriate Reg Mechanism	see Discussion Forum-e-mail response from Terje Vold dated Aug 22nd	Monitor/ follow-up required	
26.	July 30/03-Action #23	FPPR Part 5 – Roads	Road design and cattle movement	Appropriate Reg Mechanism	see Discussion Forum-e-mail response from Terje Vold dated Aug 22nd	Longer term	
27.	Sept ¾ Wshop	FPPR – none RPPR S 6	Objectives – lack of Forage Objective (objective in Range Reg under FRPA) (reciprocal wording previously in FPCode not in FPPR)				Dup #18
28,	Sept. 17/18 Wshop		Range livestock need access paths off roads-Reg or BMPs?		PAC agreed this an important issue that should be addressed outside of regulation - in best management practices or agreement between users.		Dup #26
	Invasive Plant Issues:						
29.	Sept.3/4 Wshop	FPPR S. 8-10	Soils wrt soil disturbance outside NAR linked to invasive plant introductions	Appropriate Reg Mechanism		?	
30.	Sept. 17/18 Wshop	Sec 47 FRPA Act & FPPR Sec 93	Invasive Plants-efficiencies for alternative authorities?	Logic / consistence		Responded	

	Soil Issues:						
31.	July 30/03-Action #6	FPPR S. 8-10	Soil Disturbance		see Discussion Forum-e-mail from Terje Vold responses dated Aug 29 & Aug 18th		Dup #29
32.	Sept. ¾ Wshop	FPPR S. 8-10	Soils wrt soil disturbance outside NAR linked to invasive plant introductions		Linked to response Discussion Forum July 30 Action #6 & #20		Dup #29
33.	Sept. ¾ Wshop	None	Revegetation: Fire Disturbed Areas (Soil wrt Range) – also (Soil wrt Timber)	n/a		Longer term	
	Water Issues:						
34.	July 30/03-Action #13	FPPR S. 57	Protection of water quality in community watersheds and access management	Appropriate Reg Mechanism	see Discussion Forum-e-mail responses from Ian Miller dated Aug. 26th and Terje Vold dated Aug 22nd	Responded	
35.	July 30/03-Action #14	FPPR S. 50-53	Riparian	Interpretation / clarity / definition	see Discussion Forum-e-mail response from Terje Vold dated Aug 8th	Responded	
36.	Sept. 17/18 Wshop	FPPR S. 32	Riparian-review for clarity wrt alternative strategies				
37.	Sept 3/4 Wshop	FPPR S. 58	Watersheds – Water supply "licensed" under Act - Ground Water – re intakes and catchment areas	Logic / consistency		Responded	
38.	Sept. 17/18 Wshop	FPPR S. 32	Future PAC Discussion: Watershed Assessment Plan by Prof. Agrologist (? Hydrologist?) as alternative?	Appropriate Reg Mechanism		Longer term	
	MSRM Old Growth Issues						
39.	July 30/03-Action #15	None (enabled under FRPA S. 1)	MSRM draft old growth order	Appropriate Reg Mechanism	see Discussion Forum-e-mail comment from Brian McNaughton wrt response from Terje Vold dated Aug 3rd	Responded	
40.	Sept 3/4 Wshop	None (enabled under FRPA S. 1)	MSRM Old Growth Order - no time limit /expiry date				Dup # 39
	Cultural Heritage Issues						

41.	July 30/03-Action #10	FPPR S. 72, 73, 74	Cultural Heritage Conservation	Interpretation / clarity / definition	see Discussion Forum-e-mail response from Terje Vold dated Aug 20th	Responded	
	First Nation Concerns:						
42.	Sept 3/4 Wshop	FPPR S. 72, 73, 74, & 76	First Nations - Cultural Heritage Resources management – identifying location/vandalism concerns, (infringement?)				
43.	Sept 3/4 Wshop	FPPR S. 95, 102, 102, 104 RPPR S. 22 WPPR S.12	First Nations - review and comments provisions and how they relate to gov't obligation to consult				
44.	Sept 3/4 Wshop	FPPR S. 72, 73, 74	First Nations - gaps/overlaps -*Heritage Conservation Act*				Dup # 41
45.	Sept. 17/18 Wshop	FPPR S. 92	5 Day "Emergency" provision-wrt First Nation notification requirements				
	Compliance & Enforcement Issues:						
46.	July 3/03-Minutes Flagged Issue #7		C&E-Explanation Request	Management philosophy		Longer term	
	Notification Requirements:						
47.	Sept. 3/4 Wshop	FPPR S. 120-125	Lack of draft working.				
48.	Sept. 17/18 Wshop	FPPR Part 6	Mid-Term PAC Discussion: Notification & Reporting/data collection requirements				Dup # 47
	Professional Reliance						
49.	July 30/03-Minutes Flagged Issue #8		Professional Reliance-risk & liability				
50.	Sept ¾ Wshop	FRPA S. 5, 13, 33 RPPR S. 5 WPPR S. 16	Professional reliance – lack of requirement for professonal to sign off plans	Appropriate Reg Mechanism		Monitor/ follow-up required	
	LRMPs/Landscape Level/Land Use Issues:						

51.	July 30/03-Action #16	FRPA S. 1, 5, 13, 33	Land Use policy objectives	Appropriate Reg Mechanism	see Discussion Forum-e-mail response from Terje Vold (and inserted advice from Blake Ford) dated Aug 21st	Monitor/ follow-up required	
52.	July 30/03-Action #17	FPPR S. 21, 22 & S. 62, 63	Species mix at landscape level	Appropriate Reg Mechanism	see Discussion Forum-e-mail response from Terje Vold dated Aug 22nd	Monitor/ follow-up required	
53.	Sept 3/4 Wshop	FRPA S. 1, 5, 13, 33	Lack of legal authority for LRMPs under Forest Planning and Practices Reg.				Dup # 51
	Visuals:						
54.	Sept. 3/4 Wshop	FPPR S. 71	Visuals - no positive MOF obligation to establish VQOs after MSRM establishes scenic areas (& no specifications for VQOs - i.e. R, PR, M, etc.)	Appropriate Reg Mechanism		Responded	
55.	Sept 3/4 Wshop	FPPR S. 71	Lack of VQOs established for backcountry areas	Appropriate Reg Mechanism		Responded	
	Site Plan Issues:						
56.	Sept. 3/4 Wshop	FPPR S. 89 & 90	FRPA Sec 16 (2.1) FSP approval - DM auth. to request more info (including site plan?)	Interpretation / clarity / definition		?	
57.	Sept 3/4 Wshop	FRPA S. 10 & 11 FPPR S. 105	Site Plans - level of detail concern	Appropriate Reg Mechanism		Responded	
	Silviculture Issues:						
58.	July 30/03-Action #9	FPPR S. 21 & 22	Stocking Standards & non-timber values	Appropriate Reg Mechanism	see Discussion Forum-e-mail response from Terje Vold dated Aug 20th	Responded	
59.	July 30/03-Action #17	FPPR S. 21, 22 & S. 62, 63	Species mix at landscape level		see Discussion Forum-e-mail response from Terje Vold dated Aug 22nd		Dup # 52
60.	Sept 3/4 Wshop	FPPR S. 1	Forest Health/Timber Health - definitions required				Dup # 15
	Objectives – Issues:						

61.	July 30/03-Action #16	FRPA S. 1, 5, 13, 33	Land Use policy objectives		see Discussion Forum-e-mail response from Terje Vold (and inserted advice from Blake Ford) dated Aug 21st		Dup # 51
	FSP Issues:						
62.	July 30/03-Action #1	FPPR S. 84-95.1, 101	Legal Opinion re FSP approval		see Discussion Forum-e-mail advice from Blake Ford re: requirement to issue FSP contrary to law		Dup # 8
63.	July 30/03-Action #19	FPPR S. 89 & 101 RPPR S. 15	Plan approval test - balance concerns		see Discussion Forum-e-mail response from Terje Vold dated Aug 21st		
64.	Sept. 3/4 Wshop	FPPR S. 94	Cumulative Effect of FSPs (Sec. 94)	Interpretation / clarity / definition		Responded	
65.	Sept 3/4 Wshop-	FPPR S. 85 & 86	FSP detail concern - FDU "blobs" insufficient to adjudicate results and strategies	Appropriate Reg Mechanism		Responded	
66.	Sept 3/4 Wshop	FPPR S. 84, 85	FSP detail concern - re "declared areas"	Interpretation / clarity / definition		Responded	
	Public Review and Comment Issues:						
67.	July 30/03-Action #18	FPPR S. 95, 102, 103, 104	Public review and comment provisions by persons "affected" by plan	Interpretation / clarity / definition	see Discussion Forum-e-mail response from Terje Vold dated Aug 21st	Responded	
68.	Sept 3/4 Wshop	FPPR S. 95, 102, 103, 104	Public review and comment – potential lack of SDM ability to consider public input at plan approval				
	Section 89 Issue:						
69.	July 30/03-Action #19	FPPR S. 101 (also RPPR S. 15)	Plan approval test - balance concerns		see Discussion Forum-e-mail response from Terje Vold dated Aug 21st		
70.	Sept. 3/4 Wshop	FPPR S. 89 & 101 RPPR S. 15	Forest Planning & Practices Sec. 89 (Linked to Aug. 30th Action #19 above)				

	Training Issues:						
71.	Sept. 17/18 Wshop	NA	PAC – Ongoing/Future Training needs consideration	NA		Longer term	
	Woodlot Issues:						
72.	Sept. 17/18 Wshop	WPPR S. 27	Woodlot Reg. – use of "Localized Feature" legal review {GROUP}		Recognizing localized features may give credence to illegal activities and lead to designation that would not otherwise have occurred.		Dup # 1
73.	Sept. 17/18 Wshop	WPPR S. 27	Raised wrt Woodlot Reg use of "Localized Feature" and Concern Generally wrt Definitions and consistency across regulations				
	Roads Issues:						
74.	Sept. 17/18 Wshop	FPPR S. 106	Roads Sec – use of term "Industrial" – wrt evenness re safety	Interpretation / clarity / definition		Responded	
75.	Sept. 17/18 Wshop	FPPR S. 108	Culverts/Peak Flow – clarity of wording issue	Interpretation / clarity / definition			
76.	Sept. 17/18 Wshop	FPPR S. 106, 117 and others	Vicarious Liability – (review by gov't underway)	Interpretation / clarity / definition	wrt word "user' check definition of "user" (legally, regulation will not limit liability) A road can be built to a standard acceptable for industrial use, but a licensee (or road permit holder) has little or no control over the user		
77.	Sept. 17/18 Wshop	FPPR S. 117	Roads Sec. – need for "preventative maintenance"	Interpretation / clarity / definition	T. Vold advised the Act is very clear on this point and this concern is addressed. Policy Team to review Act. PAC believes the Act is clear on this point.		
78.	Sept. 17/18 Wshop	FPPR S. 117	Tourism/Industry agreement/ protocal wrt Roads				Discuss off table

Appendix II: Issues and Analysis – One pagers

Draft analysis work dated October 31, 2003

This document describes the issues and concerns raised in discussions by PAC based on the July 2003 drafts of the FRPA regulations. The document has been updated to provide current status of issue based on latest draft (October 2003) FRPA regulations.

Each issue is reported on a separate page using a standard format.

The PAC component includes the reference # that links to Appendix 1 table of concerns/issues (also called the PAC Tracking Table), the source when/where the issue was raised, the reference in the July 2003 regulation where applicable. The issues are titled and coded with respect to the type of issue.

Government component presents the response by the Policy Team including an analysis of the issue and current status given latest draft (October 2003) of the regulations.

NOTE: This document has NOT been updated to reflect the final FRPA regulations, therefore "draft" is placed on each page to underscore this point.

PAC COMPONENT

Issue # and title: 1. Localized features

Regulation: WPPR and RPPR **Sections** (July draft): s. 27 in WPPR, and s. 25 in RPPR

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue: Localized features are defined somewhat differently in July drafts of the WPPR and RPPR, and term is not used in FPPR. Localized features could be inappropriately used to provide legal status to unauthorized (trespass) facilities or structures.

Analysis of July draft:

The July draft FPPR defines "resource feature" in s. 74 (1) to include a wide array of values as listed such as authorized recreation facilities, range improvements, and cultural heritage resources. Wildlife habitat features are addressed in s. 75, and authorized water intakes and delivery infrastructures are protected in s. 58. The FPPR does not provide for additional "localized features" to be addressed.

In the July draft WPPR, resource features and wildlife habitat features are defined as per FPPR and addressed in s. 26 and 34 respectively. S. 39 addresses water supply intakes and delivery infrastructures in a community watershed. There is an additional provision for the plan to identify localized features and to manage or protect them. The rationale for this is to allow the plan to address local interests that can often be raised given the proximity of woodlots to local communities. Since localized features are not defined, this could include non-authorized (technically illegal or in trespass) recreation trails or water intake facilities for domestic use which frequently exist.

The July draft RPPR defines resource features to be wildlife habitat features, water intakes and infrastructure authorized under *Water Act,* recreation features and any localized feature designated by the minister as a resource feature. This allows the minister to specify as a localized feature values that were listed in FPPR as a resource feature that were not included in RPPR (such as cultural heritage resources or authorized recreation facilities).

As an alternative to introducing term "localized feature" in the WPPR, appropriate management of other local values of interest could be captured voluntarily by the license holder in their plan and/or in response to public review and comment. Defining localized features in the draft regulations to potentially include illegal (unauthorized) facilities or structures may be inappropriate and potentially a conflict in law.

Current status:

- The term "localized feature" has been removed from the latest draft of WPPR. These values can still be voluntarily addressed by woodlot operators in response to public review and comment.
- The term "localized feature" has been retained in latest draft of RPPR since "resource features" in the RPPR is defined more narrowly to include a smaller subset of values (than occurs in FPPR and WPPR).

PAC COMMENT

Issue # and title: 2. Objectives are too general

Regulation: Forest Planning and Practices **Section** (July draft)**:** 6, 9, 20, 22, 33, 63, 73 and 88

Action: Responded **Issue Type:** Appropriate regulatory mechanism

Issue:
A key component to the FRPA regime is the "objectives set by government." PAC has raised concerns that the July draft objectives are too general to provide meaningful guidance to successful administration of the Act and regulations. This could lead to confusion over the range of acceptable alternatives to default standards on the part of licensees and statutory decision-makers. It is also a public confidence issue because it goes to whether the regulations will deliver equivalent environmental standards to the Forest Practices Code. PAC notes that the factors that are listed in support of the objectives set by government in the draft FPPR are may be a useful source for further definition of the objectives, however at present they are only discretionary considerations.

GOVERNMENT COMMENT

Analysis of July draft:
The objectives set by government in the draft FPPR are generally worded; for example to "conserve" the value. The factors may be used for the purpose of developing a result or strategy, however, the results or strategies do not have the address factors.

The absence of mandatory factors provides greater scope to potential results or strategies that may be proposed in a Forest Stewardship Plan but makes it difficult to not accept a result or strategy if it is consistent with the broadly worded objective. Innovation is increased, but risk that key factors will not be addressed is also increased since the "bottom-line" requirements are not clear.

The wording of some of the objectives in the draft Range Planning and Practices Regulation (s. 6) and draft Woodlot Planning and Practices Regulation (s. 5) include some of the factors in the FPPR as part of the objective itself. For example, the need to maintain stream bank and stream channel integrity is a factor in s. 33 of the FPPR that may be used to address the objective for riparian areas in s. 32, yet its part of the objective statement itself for riparian areas in s. 5(5) of the WPPR.

Current status:
- The latest draft of the FPPR now includes mandatory factors; they are listed in Schedule A (s. 122-126).

Issue # and title: 3. Consistency of wording of objectives for same values between regulations

Regulation: FPPR; WPPR; RPPR **Sections**(July draft): FPPR s.8,19,21,28.1,32, 62,72;WPPR s.5;RPPR s.6

Action: Monitor / follow-up required **Issue type:** Logic or consistency

Issue:
The wording for objectives set by government for a resource value (e.g. soils, biodiversity) varies between the three draft planning and practices regulations (e.g. FPPR, WPPR, and RPPR). Should they be worded differently?

Analysis of July draft:
Government's goal for the conservation of various resource values such as soils and biodiversity should be the similar regardless of the nature of the license holder (major forest licensee, woodlot operator, range tenure holder). Having said that, the legal objectives for various resource values may need to be worded differently in the three regulations for reasons such as the type of the activity associated with different agreement holders, levels of risk, and previous Code requirements (to show environmental equivalency). For example, s. 13 in FRPA recognizes these differences by stating that woodlot licence plans need not be consistent with objectives that pertain to retention of old forests while this is expected to be a requirement of major forest licensees.

As noted in issue 2, the draft FPPR generally includes broadly worded objectives to "conserve" a resource value with the provision of factors as optional considerations. In the RPPR and WPPR, objectives have sometimes included the factors noted in the FPPR as part of the objective statement itself.

Any major changes in the wording of objectives for the three regulations may entail considerable discussion that may not be practical at this time.

Current status:

- The objectives in three regulations evolved on their own in consideration of each type of tenure holder and this has resulted in the wording of objectives being different for particular resource values. No attempt has been to provide similarly worded objectives. Limited time would make this task very challenging. The issue can be revisited later should the different wording of the objectives be a concern.

FAC COMPONENT

Issue # and title: 4. Unifying goal statement for regulation

Regulation: Forest Planning and Practices **Section**: N/A

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue: Objectives exist in the regulation for individual resource values, but there is no cohesive vision or goal statement. As a consequence, the overall purpose or intent of the Act and regulations may not be clear.

GOVERNMENT COMPONENT

Analysis:

The *Forest Practices Code of BC Act* included a preamble about sustainable use that served as a communication tool. The intent of the preamble at the time was not to add another layer of legal considerations for statutory decision makers but to communicate the overall intent or vision of the Code. Legal challenges have resulted in courts using the preamble as a mechanism to interpret the FPC and regulations.

To avoid this issue reappearing in FRPA, advice has been that the new Act and regulations should be about regulating forest practices (to avoid bad practices) but should not be used as a communication tool (e.g. to promote good sustainable forest management practices). As a consequence, no preamble was prepared for the FRPA.

Other mechanisms exists outside legal frameworks for expressing a vision or goal for sustainable forest management including:

- Canada's National Forest Strategy
- MOF's Service Plan

Sustainable vision or goal statements generally require support from both legal (FRPA and regulations) and non-legal sources (e.g. funding, certification).

Current status:

- Current draft FRPA regulations continue to not have a preamble that provides a goal statement. In part this is due to concern that this would inadvertently interject another legal layer when interpreting the Act and regulations.

PAC COMMENTS

Issue # and title: 5. Reciprocal considerations

Regulation: Forest Planning and Practices

Sections (July draft): 92, 102, 103

Action: Responded

Issue type: Logic or consistency

Issue: Reciprocal "good neighbour" provisions where agreement holders operating in the same area of land (e.g. forest, range and other operators) address and minimize adverse impacts on each other should reduce local conflicts.

GOVERNMENT COMMENTS

Discussion based on July draft:

Revised versions of s. 92, 102 and 103 were distributed at last PAC mtg on Sept. 17/18th. As per current Code, s. 102 requires the proposed forest stewardship plan be made available for public review and comment by publishing a notice in the newspaper that the plan is available for review at the licensee's place of business or other specified venue. The normal period for review and comment is 60 days. S. 103 indicates opportunities for review and comment need to be commensurate with the nature and extent to which the person's rights are affected by the proposed plan. S. 103.1 states that the licensee must provide MOF with a copy of the comments received and describe changes made to the plan as a result of the comments received.

New s. 92 addresses reciprocity concern where the holder of a Forest Act or Range Act agreement must manage potential adverse impacts on other agreement holders in the operational plan --- provided that other agreement holders are required to do the same. This requires other tenure holder holders to request that such provisions be included in the agreement, licence, permit or tenure that govern their responsibilities. A similar reciprocity provision could be included in the Range Act or Range Planning and Practices Act. To facilitate these new reciprocity provisions, licensees may wish to enter mutual agreements where they directly submit plans to each other for review to augment legal requirements for notice. Range policy team has concerns about the wording of s.92.

The draft wording of s. 92 requires the minister to notify the forest licence holder (and presumably the range licence holder if similar provision is provided in RPPR) what other agreements apply under these new provisions. This represents additional workload for MOF but is expected to be manageable.

Current status:

- Section 19 in the latest draft of FPPR addresses effect on other tenured resource users. The Minister can specify potentially affected agreements to the forest licensee who prepares a FSP. The licensee then must include measures in the plan that manage potentially adverse effects on the rights of the other agreement holders specified by the Minister.
- Section 5 in the latest draft of the RPPR has similar provisions.

PAC COMPONENT

Issue # and title: 6. Access management

Regulation: N/A

Action: Longer term **Issue type**: Appropriate regulatory mechanism

Issue: Integrated access management needs and concerns with various tenured and non-tenured users require coordination. Access management is also an important issue for managing wildlife values and some species at risk. PAC is concerned that the regulation does not provide adequate tools to deliver access management goals. In particular, the current section 22.2 seems limited to safety issues. There needs to be an effective mechanism to implement the access management component of higher level plans, and in their absence, greater ability for agency officials to address these access issues

GOVERNMENT COMPONENT

Analysis:

The occurrence of, and type of, access mgt strategies varies across the province. In the '70's and '80's, there were Coordinated Access Mgt Plans (CAMPs) underway or completed for some areas of the province where the issue of forest road access and deactivation was significant particularly in context of recreational access and wildlife management. Several CAMPs were undertaken in the Southern Interior portions of the province.

In the '90's, developing a strategic access mgt strategies was sometimes identified as an important implementation step following completion of the approved regional land use plan or Land and Resource Mgt Plan (LRMP). Examples of strategies that have been undertaken in this regard include:

- Vanderhoof LRMP access mgt strategy which covers the entire LRMP/forest district area in context of forest road development and deactivation;
- Bulkley Recreational Access Mgt Plan (RAMP) which focuses more on dispersed motorized and non-motorized summer and winter recreational access in an attempt to resolve recreational use conflicts (e.g. between cross country skiers and snowmobiliers) and minimize conflicts on wildlife (e.g. caribou);
- Golden recreation access mgt strategy which has a similar focus as the Bulkley RAMP;
- Cariboo region caribou strategy that is intended to include a recreational access component in effort to minimize conflicts with mountain caribou.

Currently, a severe limitation to development and implementation of access strategies, particularly as they relate to forest roads, are budget constraints. Implementing a strategy that maintains a road for non-industrial access is limited by lack of funds available to maintain roads for that purpose. Only a few commercial non-forest users (e.g. for subsurface resource use or high-end commercial recreation) are likely to have funds to address forest road maintenance. As a consequence, the Ministry of Forests has introduced a new lower standard of care for wilderness roads to allow for at least some rustic road use.

Options:

Potential opportunities to address access issues include:

1. Strategically for a region or subregion, particularly where identified as a key implementation item in an approved land use plan;
2. In Sustainable Resource Mgt Plans developed by MSRM for key landscapes or watersheds;
3. In public review and comment of Forest Stewardship Plans developed by forest licensees particularly as they may relate to an objective set by government.

Recommendation:

Defer a PAC discussion on access mgt for later meetings

PAC COMMENTS

Issue # and title: 7. Role of best mgt practices and guidebooks

Regulation: All

Action: Longer term **Issue type**: Logic or consistency

Issue: What is appropriate role of code guidebooks and best management practices documents relative to FRPA and the regulations? Government needs to be clear about the status of the current Code guidebooks and the best management practices set out therein. For example, do the best management practices recommended in the Guidebooks still represent government policy? If not, will new best management practices be developed? When?

GOVERNMENT COMMENTS

Analysis:
Government prepared numerous guidebooks in support of the *Forest Practices Code of BC Act*. For the most part, the guidebooks were viewed as "guides" to be considered by licensees or government but were not requirements. Some guidebooks however were cited in the regulations supporting the Act, and in these instances, they were to be followed. The current Code guidebooks serve as information that can be used by resource professionals in context of FRPA where relevant.

The term "best management practices" (BMPs) is often used by various sectors for support documents that help guide qualified resource professionals. Ideally, BMPs would be prepared collaboratively by the "expert" community (e.g. professional and other associations, industry, academia, First Nations, government and other experts). Also, BMPs need to be prepared in a manner that encourages innovation and learning by testing other approaches.

BMPs can also be valuable to licensees and resource professionals when demonstrating due diligence. For example, recognizing the potential high risks associated with landslides, the Association of Professional Engineers and Geoscientists of BC are revising and upgrading the Terrain Stability Assessment Guidelines. This will help protect members of the association when undertaking these activities that they have behaved in a duly diligent manner.

Options:
1. Allow the "expert" community to identify, priorize and prepare BMPs as needed.
2. Government play a more active role in this regard.

Recommendation:
Defer a PAC discussion on guidebooks and BMPs for later meetings

PAC COMPONENT

Issue # and title: 8. Plan approval should it result in violation of health and safety requirements.

Regulation: Forest Planning and Practices **Sections** (July 2003): s. 84-95.1, 101

Action: Responded **Issue type**: Interpretation, clarity, definition

Issue: Can a Designated Decision-Maker (DDM) not approve a Forest Stewardship Plan if he/she knew that the plan was in violation of a health or safety legal requirement yet were in compliance with FRPA approval tests. The issue could apply to other potential violations of law.

GOVERNMENT COMPONENT

Analysis:

Legal opinion was that the DDM would not be required to approve the plan it if was clear and inevitable that the approval of the plan would result in a contravention of law. However, the situation is unlikely particularly in the case of health and safety. FSPs address results or strategies needed to meet government objectives and normally would not address detailed operational activities related to on-the-ground harvesting or road building. Further, licensees with an approved FSP must still receive authorizations under the *Forest Act* such as a cutting permit or road permit before commencing on-the-ground activities. See PAC Action #1 for more discussion.

Current status:

- Section 2(2) has been added to latest draft FPPR that states if there is a conflict between *the Workers Compensation Act* or a regulation made under that Act and this regulation, the *Workers Compensation Act* or the regulation made under that Act prevails. This is similar wording as existed in FPC regulations.

Issue # and title: 9. Contractual clauses in cutting permits and road permits

Regulation: N/A

Action: Responded **Issue type**: Interpretation, clarify, definitions

Issue: Do contractual clauses exist in cutting permits and road permits that require the holder of the permit to obey all laws including health and safety requirements? If not, how do requirements in other laws take effect?

Analysis:
The templates for cutting permits and road permits include a clause that states the permit is subject to both the Forest Act and regulations, and Forest Practices Code, regulations and standards. . The permit templates do not refer generically to other pieces of legislation. The road permit template does includes a clause that permit holder must obtain all necessary permits or authorizations from other resource agencies.

The rationale for this:

- It allows the MOF to undertake compliance and enforcement on the permit under its (MOF) legislative authority (i.e. requirements under Forest Act and Code);
- It allows for permit to be cancelled (i.e. another "enforcement" tool) if permit holder were not compliant with requirements under Forest Act or Code, and
- It assumes other Acts (e.g. Federal Fisheries Act, Wildlife Act, Weed Control Act, Heritage Conservation Act, Occupational Health and Safety Regulations, etc) have their enforcement mechanisms.

Issue # and title: 10. Trigger need for FSP design to ensure compliance with OHS laws

Regulation: Forest Planning and Practices **Sections** (July draft): s. 84-95. 101

Action: Responded **Issue type**: Appropriate regulatory mechanisms

Issue: Is FPPR appropriate vehicle to require FSPs to be in compliance with Occupational Health and Safety Regulations (OHSR)?

Analysis based on July draft:

In the design of FRPA, it is assumed that other acts and regulations, such as OHSR, have mechanisms in place to enforce their legal requirements. If FRPA regulations duplicated requirements, there may be confusion as to what statute prevails (overlapping authorities) and potential confusion should OHSR regulations change. A design principle for FRPA and regulations therefore was not to duplicate requirements in another enactment and not to use the FRPA legal provisions as a communication tool. Communication of requirements in another enactment can be done using normal communication tools such as training, brochures, etc.

Issue #8 addresses FSP approval in context an immediate infraction of a OHS requirement.
Issue #11 below notes that FSPs are not likely to be that relevant with respect to addressing safety and health issues.

Current status:

- Section 2(2) has been added to latest draft FPPR that states if there is a conflict between *the Workers Compensation Act* or a regulation made under that Act and this regulation, the *Workers Compensation Act* or the regulation made under that Act prevails. This is similar wording as existed in FPC regulations.
- This is not a plan content trigger, but an overarching requirement.

Issue # and title: 11. WCB/Union notification of plans with respect to safety concerns

Regulation: Forest Planning and Practices

Action: Responded **Issue type**: Appropriate regulatiory mechanism

Issue: It is important to be proactive when reviewing plans to address safety concerns before injuries occur. But is FRRP right vehicle to address this?

Analysis:
The Forest Stewardship Plan identifies forest development units within which development activities can be authorized (e.g. through a cutting permit or road permit) and results and strategies that are consistent with government objectives. The results and strategies do not have to specify how harvesting is to occur. Site plans under FRPA need to identify how the results or strategies apply to the site but again do not have to specify how harvesting is to occur. The intent of FRPA is to define results (or outcomes) to be delivered, but leave to industry the responsibility of determining the best ways to deliver the results. For example, the FSP and site plan will specify stand structure retention and soil disturbance results or strategies (or adopt defaults), but the nature of harvesting done to achieve these results (e.g. helicopter, cable, ground) is not required. The current Code does not obligate the licensee to specify harvesting methods in Forest Development Plans and Site Plans.

The specific ways in which harvesting is intended to occur is normally addressed in the licensee's logging plan. The logging plan is an internal company plan that is not required by law is not reviewed or approved by government.

The Occupational Health and Safety Regulation (OHSR) requires that the harvest practices intended for an area, along with other information such as a risk assessment, be delivered to the Workmen's Compensation Board (WCB) prior to the projects commencement.

There appears to be little value in requiring FRPA plans be submitted for review and comment to WCB, union and joint health and safety committees for review and comment since these plans are not likely to provide the most relevant information of interest to proactively address safety issues. The plans are nevertheless available to anyone who wishes to review them and provide comment.

The OHSR appears to be vehicle intended to proactively address safety issues. The FRPA regulations could repeat these obligations in law but this is a concern since:

- the intent of the drafting new regulations is to not deliberately overlap with requirements in other legislation for the purposes of communicating requirements in other laws,
- the other regulations themselves have provisions for compliance and enforcement.

Options:

1. Status quo with respect to regulations. FSP and site plans are likely not that relevant with respect to safety prevention however they are available for review to anyone. Do not repeat requirements in OHSR in FPPR, but communicate this requirement in other ways. For example, consider local agreements between union, joint committees and forest companies regarding logging plans since FRPA can not regulate review and comment of plans it does not require.
2. Use FPPR as a communication tool by restating and perhaps augmenting OHSR requirements.

Recommendation:
Option 1. Also note that s. 2(2) in Oct 2003 draft of FPPR has been added to states if there is a conflict between *the Workers Compensation Act* or a regulation made under that Act and this regulation, the *Workers Compensation Act* or the regulation made under that Act prevails. This is similar wording as existed in FPC regulations.

PAC COMPONENT

Issue # and title: 12. Tree gene resource standards

Regulation: Forest Planning and Practices **Section**: 27

Action: Responded **Issue type**: Appropriate regulatory mechanism

Issue: Use of Chief Forester standard for tree gene resources and need for PAC review?

GOVERNMENT COMPONENT

Analysis:
FRPA (s. 169) provides for Chief Forester to establish standards for tree gene resources. The standards are viewed as technical consolidation of material that currently scattered in several documents including existing regulations, guidebooks and policies. The standards will be technically reviewed by the Forest Genetics Council. Further information on the standards are available in PAC Action #24 (e-mail dated Aug. 1, 2003)

Options:
1. PAC not review the technical standards.
2. PAC review the technical standards

Recommendation:
Option 1`. A copy can be made available to PAC however for information.

Issue # and title: 13. Lack of a timber objective

Regulation: Forest Planning and Practices **Section** (July): 19 and 21

Action: Underway **Issue type**: Appropriate regulatory mechanism

Issue: Some PAC members feel that the regulations should have a timber objective, while others feel that the government's objective for timber is expressed in tenure rights and AAC determinations. Even if the regulations were to provide a timber objective, there is considerable debate over what would constitute a meaningful objective.

Analysis:
PAC was unable to ascertain if the objectives set by government for timber and other values will lead to the appropriate balancing (social, environment, economic) of values. Several PAC members support the idea of a timber objective, while some feel that the government's timber objective is found in contractual tenure rights and AAC determinations. Those wanting to see a timber objective are divided on whether or not this objective should only focus on managing timber or include access to timber. PAC is concerned that the current "draft" timber objective is not workable since it implies the calculation of timber impacts on an area covered by an FSP, which may not be appropriate. PAC is also concerned that the use of the qualifying phrase "without unduly reducing the supply of timber from British Columbia's forests" in the objectives for soils, watersheds, riparian, biodiversity, old growth, wildlife and VQOs amounts to a "trump" of these values by timber. Since the timber objective is a work in progress PAC is interested in reviewing the results presented in revised draft of regulations.

Current status:

- Section 6 in current draft of the FPPR provides a timber objective that is similar to one discussed at last PAC mtg. Objectives for other values (except cultural heritage resources) include the phrase "without unduly reducing the supply of timber". The intent of the timber objective and the phrase for non-timber objectives is to deliver FRPA following the same timber supply impact limits that guided FPC delivery. The phrase "without unduly" is intended to guide industry when preparing results or strategies (that may differ from defaults) of what government's expectations are with respect to impacts; this in turn also guides designated decision-makers who approve FSPs. The timber objective also is intended to guide the approval of FSPs when s. 28 regarding "balancing objectives" is applied.

- Concern has been expressed that the objectives set by government in draft 6 were sometimes too general. The inclusion of a timber objective along with mandatory factors in Schedule A are intended to provide clearer direction.

FAO COMPONENT

Issue # and title: 14. No objective for timber concern ---- see issue # 13 above.

GOVERNMENT COMPONENT

Draft

Issue # and title: 15. Definitions needed for forest health and timber health

Regulation: Forest Planning and Practices **Section**: 1

Action: Monitor / follow-up required **Issue type**: Interpretation, clarity, definition

Issue: Forest health is not defined in FRPA or regulation and this could cause confusion with respect to its meaning. Timber health, if used in regulation, may also need to be defined.

Analysis:
FRPA and regulations are intended to define in law terms that are not "commonly" applied, known and accepted by professionals or defined in the dictionary.

The MOF has a glossary of forest terms on its website and defines ***forest health*** to be:
a forest condition that is naturally resilient to damage; characterized by biodiversity, it contains sustained habitat for timber, fish, wildlife, and humans, and meets present and future resource management objectives.

Current status:

- "Forest health" is not defined in the latest draft of the FPPR; the MOF glossary can be used as how term commonly applied.
- Section 1 of the latest draft of FPPR includes a definition of "forest health factors"which means biotic and abiotic influences on a forest that have an adverse effect on the health of trees and other plants.

PAC COMPONENT

Issue# and title: 16. Status report on Ungulate Winter Ranges and Wildlife Habitat Areas

Regulation and sections: FPPR s. 29, 30; WPPR s. 35, 36; RPPR s. 28, 29

Action: Monitor / follow-up required **Issue type**: Interpretation, clarity and definition

Issue: What is status of UWR and WHAs: how many have been established and where, what is current progress in support of Code and FRPA?

GOVERNMENT COMPONENT

Analysis:
Less than 10% of anticipated legal requirements for UWR and objectives completed. 160 WHAs have been approved with likely less than 2% of the timber supply "budget" for identified wildlife used (i.e. about 98% of budget remains available). Problems delaying their establishment of UWR and WHAs include need for analytical support (e.g. to assess timber supply impacts), stakeholder consultation and need to resolve issues identified, and inter-agency coordination. A recently signed Memo of Understanding for UWR may improve delivery. See PAC Action #12 (e-mail dated August 25th) for more information.

Current status:

- Latest draft of FPPR now includes an objective set by government for wildlife so that wildlife can be addressed in FSPs even if decisions regarding UWR and WHAs are not complete.

Issue # and title: 17. Wildlife objective

Regulation: Forest and Range Practices **Section** (July draft): 28, 29

Action: Responded **Issue type**: Appropriate regulatory mechanism

Issue: In order to be in effect, proposed wildlife objective requires an order by Minister of Water, Land and Air Protection to be in effect – can MWLAP deliver?

Analysis:
If decisions were complete with respect to designated ungulate winter ranges, wildlife habitat areas, and regionally important wildlife, then the forest stewardship plan would just need to be consistent with objectives for these spatially defined areas. However this is not the case (see issue # 16 above). Under the Code, wildlife could be considered under the "adequately manage and conserve" plan approval test for wildlife not covered by a higher level plan or in a UWR or WHA. FRPA has replaced this test with the requirement that the plan be consistent with objectives. To fill the "gap" where objectives enable in regulation (e.g. UWR and WHAs) are not complete, a proposed objective set by government (through s. 149 of the Act) is proposed in s. 28.1 of the draft regulations. A revised version of this draft regulation was distributed at the last PAC mtg on Sept. 17/18th.

To be in effect, the draft objective set by government must be triggered by the Minister of WLAP by preparing an order. The order needs to specify for the plan area the species to be addressed and the indicators of the amount, distribution and attributes that are necessary to conserve wildlife habitat for the species. Sources of information for an order include:

- cabinet approved LRMP policy objectives for wildlife,
- cabinet approved plans for wildlife such as the spotted owl mgt plan,
- cabinet approved recovery plans for species at risk.

Cabinet approved decisions are ideal for the Minister of WLAP to use since a balanced decision that takes into account social, economic and environmental considerations was presumably made. In some areas, MWLAP may need to consider information that has not yet reached cabinet for decision in order to provide some interim conservation for key wildlife values consistent with Code timber supply impact limits (i.e. without unduly reducing the supply of timber).

There is some concern that MWLAP may not be able to deliver this requirement for an order. MWLAP staff however believe they can deliver.

Current status:

- The draft wording of objectives set by government for wildlife shown to PAC at the meeting is now reflected in s. 7 of the latest draft of the FPPR.

FAC COMMENT

Issue # and title: 18. Need to consider forage for wildlife and livestock

Regulation: Forest Planning and Practices

Action: Responded **Issue type**: Appropriate regulatory mechanism

Issue: Forest development activities such as harvesting and reforestation can affect forage resources for wildlife and livestock? How is this issue handled in FPPR? Is there a need for a forage objective in the FPPR?

GOVERNMENT COMMENT

Analysis (July draft):
Wildlife objectives (see issue # 17 above) can address forage. Proposed new reciprocity provisions in s. 92 of regulations (see issue # 5 above) can address forage impacts on range tenure holders. Some view an additional forage objective in the regulations as a higher standard than the current Code (code plus), whereas others feel it is needed to provide equivalency with respect to the "adequately manage and conserve" test with current Code.

Current status:

- Wildlife objectives set by government remain in the latest draft of the FPPR (s. 7).
- The reciprocity provisions are now in s. 19 of the latest draft of the FPPR and s. 5 of the RPPR (see issue #5 for more discussion on this).
- No separate forage objective exists in current draft of FPPR.

Issue # and title: 19. Wildlife order

Regulation: Forest Planning and Practices **Section:** 28.1(2)(a)

Action: Responded **Issue type:** Appropriate regulatory mechanisms

Issue: Revised s. 28.1 (2)(a) on wildlife objectives incorrectly refers to Division 2 of Part 3.

Analysis (faxed insert to July draft):
Division 1 in Part 3 should be cited instead since it identifies process for making orders.

Current status:

- This has been corrected; see s. 7 in latest draft of FPPR

PAC COMPONENT

Issue # and title: 20. Memo of Understanding regarding Ungulate Winter Ranges

Regulation: FPPR, WPPR, and RPPR

Action: Responded **Issue type:** Interpretation, clarity, definition

Issue: Agency roles and responsibilities for UWR and other designations enabled under FRPA and the regulations may be unclear.

GOVERNMENT COMPONENT

Analysis:
A Memo of Understanding (MOU) has been prepared and has now been signed off regarding agency roles and responsibilities for establishing UWRs. A copy of MOU was distributed earlier to PAC. The MOU hopefully will result in improved delivery of UWRs. It may serve as an example for other MOUs which may be needed on other designations enabled under FRPA.

Draft

Issue # and title: 21. Status report on Ungulate Winter Ranges and Wildlife Habitat Areas ---

see issue # 16 for details

BLM COMMENT

Issue # and title: 22. Need to consider forage for wildlife and livestock

GOVERNMENT COMMENT

----See issue # 18 above.

Draft

PAC COMMENT:

Issue # and title: 23. Forage objective

GOVERNMENT COMMENT:

See issue # 18 above

Draft

Issue # and title: 24. Who may do Range Stewardship Plans?

Regulation: Range Planning and Practices **Section**: 5

Action: responded **Issue type**: Interpretation, clarity, definition

Analysis: The Forest and Range Practices Act s. 32 addresses how the minister determines whether a person has demonstrated competence to prepare a Range Stewardship Plan.

Draft

Issue # and title: 25. Legislative gaps with respect to invasive plants

Regulation (July draft): RPPR s. 8 and 9; FPPR s. 93 (also see FRPA s. 47)

Action: Monitor / follow-up required **Issue type**: Appropriate regulatory mechanisms

Issue: Does a gap exist in law with respect to government's ability to control the introduction and spread of invasive plants?

Analysis:
FRPA and regulations affect the actions of forest and range tenure holders with respect to invasive plants but does not address the actions of non-tenure holders such as spread by vehicular traffic both on and off roads. If government wants to address this issue in a more "far reaching" manner in law, amendments to the *Weed Control Act* or new legislation may be needed.

Several forums are actively addressing this concern including a MLA panel and Fraser Basin Council. These initiatives are likely best mechanism to recommend appropriate actions which may entail legislative change. Further information on this is in PAC Action #20 (see e-mail sent Aug. 22, 2003).

The issue of soil disturbances outside net area to be reforested and its affect on invasive plants discussed in issue # 29 below.

Current status:
- No change to treatment of invasive plants in the latest draft regulations. Invasive plants are now addressed in s. 18 of the latest draft of the FPPR.

PAC COMPONENT

Issue # and title: 26. Road design and cattle movement

Regulation: Forest and Range Practices **Section**: Part 5 on roads

Action: Longer term **Issue type**: Appropriate regulatory mechanism

Issue: Designing forest roads so cattle do not interfere with logging trucks and to offset loss of natural range barriers

GOVERNMENT COMPONENT

Analysis:
This can likely be best addressed through advice such as through a best mgt practice document. The scope and importance of the issue to range and forest tenure holders should be assessed to priorize task relative to other issues. Also see PAC Action #23 (e-mail Aug. 22).

Draft

PAC COMPONENT

Issue # and title: 27. Lack of forage objective

GOVERNMENT COMPONENT

---- concern addressed in issue # 18 above

Draft

RAC COMMENT

Issue # and title: 28. Range livestock need access paths off roads: regulation or BMP?

GOVERNMENT COMMENT

--- concern address in issue # 26 above

Draft

Issue # and title: 29. Soil disturbances outside net area to be reforested (NAR) can cause introduction and spread of invasive plants

Regulation: Forest Planning and Practices **Section** (July draft)**:** 7 to 14, and 93

Action: **Issue type**: Appropriate regulatory mechanisms

Issue: Does the draft FPPR allow for the control of soil disturbances by licensees outside of the net area to be reforested? Soil disturbances can harbour invasive plants and cause their spread.

Analysis:
S. 8 and 9 of the draft FPPR provides an objective for soils and describes factors that may be used for developing a result or strategy that conserve the productivity and hydrologic function of soils. Soil disturbance requirements in s. 10-14 address the net area to be reforested and roadside operations but not other soil disturbances that may occur during the course of forest management.

S. 7 of the draft FPPR address damage to the environment under s. 46 of the FRPA. It defines "damage" to include soil disturbance that results in a contravention of s. 10, 12 or 14, a landslide, a gully process, etc. or other similar catastrophic events that destroy or fundamentally alter an ecosystem. It could be argued "both ways" whether soil disturbances outside of net area to be reforested that cause introduction and spread of invasive plants "fundamentally alters an ecosystem" or not.

S. 93 of the draft FPPR requires the Forest Stewardship Plan to specify measures to prevent the introduction or spread of invasive plants. S. 8 and 9 of the Range Planning and Practices Regulation and s.10 of the Woodlot Planning and Practices Regulation have similar requirements. There is not direct limit on the requirement so it could presumably be used to address soil disturbances outside of the net area to be reforested where those disturbances can lead to introduction and spread of invasive plants.

The draft Range Planning and Practices Regulation includes as an objective set by government the need to minimize undesirable soil disturbance and to re-establish ecologically suitable vegetation after disturbances occur.

Options:
1. Status quo. FPPR s. 93 requires plan to specify measures to prevent introduction or spread of invasive plants and this can be used to address soil disturbances outside of the net area to be reforested.
2. Define in s. 7 "damage" to include soil disturbances outside net area to be reforested (perhaps by adding where such damage leads to introduction and spread of invasive plants).
3. Address in Division 1 on "soils" disturbances outside net area to be reforested (perhaps by adding where such damage leads to introduction and spread of invasive plants) as either an objective (or factor) or as a practices requirement (e.g. minimize soil disturbance and re-establish ecologically suitable vegetation after disturbance occurs).

Current status:
Option 1. This addresses the real concern directly which is control of invasive plants. With latest draft of FPPR, invasive plants are now addressed in s. 18.

PAC COMMENT

Issue # and title: 30. Invasive plants – efficiencies for alternative authorities?

Regulation: Invasive plant regulation

Action: Responded **Issue type:** Logic or consistency

Issue: The current draft Invasive Plant Regulation is a one-page list of plants that are defined as invasive plants for the purposes of the Act and the regulations. This regulation is much different than other regulations that identify specific requirements for license holders or government officials. Can list be authorized another way in attempt to keep number of distinct regulations down in number, and to provide more consistency with respect to the general intent of the regulations.

GOVERNMENT COMMENT

Analysis:
Measures to prevent the introduction and spread of invasive plants are a general requirement in the FPPR, RPPR and WPPR. In that sense having a stand-alone regulation that provides a list of invasive plant species "optically" may be preferred in that it is then sensed to be a common obligation of all FRPA-related license holders.

Alternatively, to reduce the number of regulations and to eliminate a regulation that is more like a schedule, the list of invasive plants could be referred to as Schedule B in the RPPR. This list in the RPPR would be referred to in the FPPR and WPPR. This is similar to the WPPR referring the list of resource features in the FPPR as being its definition of resource features as well. The Range policy team strongly objects to this approach as the list of invasive plants applies to all 3 regulations and therefore should be in a stand alone document.

A Chief Forester's standard or minister's order is another option. The act requires invasive plants to be prescribed in regulation. But the regulation could prescribe the list of species to be those identified by the minister in an order. This list in an order would be easier to amend than one in regulation. But an order is a separate document than the regulations and represents "another" document that licensees must avail themselves to.

Options:
1. Status quo. Retain stand alone invasive plant regulation
2. Put list of invasive plants as a schedule B in RPPR
3. Establish list through a Chief Forester standard or through a minister's order.

Current status:
- Stand alone Invasive Plants Regulation retained.

Issue # and title: 31. Soil disturbance

----believe concern addressed in issue # above 29 above

R.A.C. COMMENTS

Issue # and title: 32. Soil disturbances outside net area to be reforested (NAR) can cause introduction and spread of invasive plants

GOVERNMENT COMMENTS

--- repeat of issue # 29 above

Draft

Issue # and title: Revegetating fire disturbed areas

Regulation: N/A

Action: Longer term **Issue type**: n/a

Issue: Thousands of hectares have been disturbed by BC's worst year with respect to fire distrubances.

Analysis:
Seeding and/or planting disturbed areas can improve forage and timber values and reduced introduction and spread of invasive plants. Such actions require funding and need to be done in a timely manner. MOF is preparing a rehabilitation plan for disturbed areas for government's consideration. Seed on snow may be an option in some areas.

PAC COMPONENT

Issue # and title: 34. Protection of water quality in community watersheds and access mgt

Regulation: Forest Planning and Practices **Section** (July draft): 57

Action: Responded **Issue type**: Appropriate regulatory mechanisms

Issue: Concern that non-tenure holders activities (e.g. public) could affect water quality. (Note: this is one community watershed issue; others include prevention of erosion and conserving hydrological regimes while undertaking forest practices).

GOVERNMENT COMMENT

Analysis:

water quality

- The *Drinking Water Protection Act* and regulations came into force on May 16, 2003
- The new legislation gives drinking-water officers increased powers to protect water sources from contamination by any drinking-water health hazard.
- In addition, drinking-water officers will oversee a source-to-tap assessment of every drinking-water system in the province to address all potential risks to human health.
- Water suppliers will be required to assess the risks to their water supply.
- Twenty new drinking-water officers - health officials employed by the regional health authorities - will be appointed across BC in each health region. Drinking-water officers are dedicated positions created under the Act to ensure the water British Columbians drink is safe.
- The Act prohibits against contaminating drinking water, except as authorized under an enactment, or where a person is acting with lawful authority.
- The health officer or drinking-water officer may serve orders on a person who is causing a health hazard.
- A Drinking Water Protection Plan may be prepared in complex situations and only a few are anticipated. A plan could result in requirements for MOF decision makers to consider the plan, for FRPA operational plans to be consistent with the plan, and designation of parts of the plan as a higher level plan objective (that is an FRPA objective set by government).

road access

- section 22.2 in the *Forest and Range Practices Act* enables the MOF district manager to close a forest service road or restict its use by non-industrial users if the use of the road would likely cause signficant damage to the road, signficant sediment delivery, or endanger property, **public health** or public safety.
- similarly, the holder of a road permit, with prior consent of the minister, may close the road or restrict its use for the abovementioned reasons.
- the above are general provisions in the Act that relate to community watersheds as well as other crown lands

Options:

1. Status quo. Abovementioned existing legal provisions can protect water quality and address access.
2. Consider additional legal tools.

Recommendation:

Option 1. Current draft of FPPR addresses protection of water quality in s. 60.

FAC COMPONENT

Issue # and title: 35. Use of riparian as heading in regulations for some items.

Regulation: Forest Planning and Practices **Section**: 50-53

Action: Responded Issue type: Interpretation, clarity, definition

Issue: Is "riparian" correct heading for regulations dealing with concerns such as stream crossings of safe passage of fish? Could this cause confusion.

GOVERNMENT COMPONENT

Analysis: MOF riparian research specialist feels it is appropriate to leave regulation as is in this regard (i.e. not likely to be a cause of confusion).

Draft

FAC COMPONENT

Issue # and title: 36. Riparian objectives are unclear with respect to alternative strategies

Issue: Unclear riparian objectives provide uncertainty to industry, environmental community and other stakeholders in terms of the types of alternative results or strategies that may be accepted in Forest Stewardship Plans.

GOVERNMENT COMPONENT

Current status:

- In latest draft FPPR, to improve clarity, factors listed in s. 123 now apply to objectives set by government for riparian areas in s. 8. In draft 6, factors listed may be used.
- To better enable more consistent decisions, new s. 118-119 regarding the delegation with direction has been provided in the latest draft FPPR. For example, if the Minister were concerned that more consistent decisions regarding what are acceptable results or strategies that achieve objectives for riparian areas are needed, direction can be provided to designated decision makers.

Draft

PAC COMMENT

Issue # and title: 37. Protection of groundwater infrastructure for community use

Regulation: Forest Planning and Practices **Section** (July draft): 58

Action: Responded **Issue type**: Logic or consistency

Issue: A gap exists with respect protection of intakes or delivery infrastructures

GOVERNMENT COMMENT

Analysis:
FPPR protects water intakes and delivery infrastructure where licensed under the *Water Act* . FPPR does not protect intakes or infrastructure for surface domestic water use that were developed in trespass (i.e. without getting a required Water Act licence).

The *Water Act* however does not license groundwater use. Groundwater intakes and infrastructure for community use, however, can be authorized through a permit. Logically these should also be afforded protection under FPPR since they are not in trespass. See Sept 16th issue note to PAC prepared by Garth Webber Atkins on this issue for more detail.

Options:
1. Status quo.
2. Add intakes and infrastructures authorized by permit for groundwater use by communities.

Current Status:
- In current draft FPPR, s. 60 now addresses intakes and infrastructure. The regulation has been amended to now recognize all licensed waterworks.

PAC COMPONENT

Issue # and title: 38. Watershed assessment plan

Regulation: Forest Planning and Practices **Section**: sections on riparian areas

Action: longer term **Issue type**: Appropriate regulatory mechanism

Issue: A watershed assessment plan may be most appropriate vehicle to provide alternative results or strategies for protection and management of riparian areas (than the default provisions).

GOVERNMENT COMPONENT

Analysis:
A tactical watershed-level approach to conserving riparian areas may be most effective way to propose alternative results or strategies under a Forest Stewardship Plan. This tool needs to be examined further by PAC but at a later time.

Current status:

- The "how to" develop appropriate alternative results or strategies continues to not be specified in the draft regulations. This is left to licensees with assistance from non-legal tools such as "best mgt practices" advice where available.

Draft

Issue # and title: 39. MSRM draft old growth order

Regulation: Forest Planning and Practices

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue: An aspatial order to retain old growth in landscape units is intended to provide interim protection until spatially located old growth management areas (OGMAs) are established.

Analysis:
The Landscape Unit Planning Guide (LUPG) was developed with intent to establish OGMAs in landscape units across the province. This process has been delayed for a number of reasons, and there have been criticisms for the delay from the Forest Practices Board, ENGO's and others. There is also concern that spatially locating OGMAs may not be most effect way to retain old growth – at least in some portions of the province that are highly susceptible to forest disturbances such as bark beetle infestations or fire. Perhaps an aspatial approach may be preferrable.

In the interim, while these issues are being addressed by MSRM, the proposed order provides a level of protection of old growth for various landscape units across the province. The retention levels in the order follow the guidance in the LUPG so that the timber supply impacts will be no more than assumed for Code implementation.

The aspatial provincial order does not have a time limit or expiry date. On one hand, this interim protection may slow the completion of spatially locating OGMAs (e.g. the urgency may not be as great). On the other hand, it may be determined that OGMAs in some areas should not be spatially located so having the provincial order remain in effect may be preferred.

Current status:
- MSRM is poised to release the draft OG order for public review and comment in very near future.

Issue # and title: 40. MSRM old growth order – no time limit or expiry date

-- addressed in issue # 39

Draft

Issue # and title: 41. Cultural heritage conservation

Regulation: Forest Planning and Practices **Section** (July draft): 72-74

Action: Responded **Issue type**: Interpretation, clarity, definition

Issue : Is there an overlap or gap between the draft Forest Planning and Practices Regulation and the *Heritage Conservation Act*

Analysis:

Section 13 of the *Heritage Conservation Act* defines protection measures for heritage sites and objects. Protection measures include not damaging, altering or excavating the sites or objects without a permit. The types of sites and objects specified include:

- any heritage object that was in use before 1846
- any burial place with historical or archaeological value
- any designated Provincial heritage sites or Provincial heritage object.

For a full listing of the types of heritage sites and objectives covered in the Act, see: http://www.qp.gov.bc.ca/statreg/stat/H/96187_01.htm The Act also specifies how it can be enforced.

The intent of the Forest and Range Practices Act is to compliment but not duplicate the protection measures in the Heritage Conservation Act. As a result, s. 72 in the draft Forest Planning and Practices Regulation states that the objectives set by government is to conserve or, where more appropriate, protect cultural heritage resources that are
(a) the focus of a traditional use, by an aboriginal people, that is of continuing importance to that people, and
(b) not regulated under the *Heritage Conservation Act.*
S. 73 describes factors to consider related to cultural heritage resource objectives.

In addition to the above, s. 74 enables the Minister of Forests, by order, to identify cultural heritage resources (as defined above in s. 72) to be a resource feature, and thereby afford it protection from damage or alteration except where exempted in s. 76. This can include post-1846 objects that are a focus of traditional use by an aboriginal people.

Resource features also includes recreation features that the minister considers to be of significant value. FRPA defines recreation features to include biological, physical, cultural or historic feature that has recreational significance or value. The MOF recreation features inventory includes as historic features old cabins that may be of local, regional or provincial significance. The minister may, by order, identify cultural or historic recreation features as a resource feature – and as noted above, this would enable its protection.

The enabling tools in the *Heritage Conservation Act* and the FRPA draft regulation provide a wide range of opportunity to conserve or protect cultural heritage and historic objects and sites – no apparent 'gap' exists. There may be some overlap with *Heritage Conservation Act* and recreation features however any authority to affect a recreation feature, where the feature is also considered to be a heritage site or object as defined under the *Heritage Conservation Act*, is only provided through that legislation.

Options:

1. Status quo. No apparent gap exists, some minor overlap may exist with recreation features.
2. Eliminate potential overlap by stating in s. 74(1)(i) that a recreation feature does not apply to objects or sites regulated by the *Heritage Conservation Act*.

Current status:

Option 1. Latest draft of FPPR now addresses cultural heritage resources now in s. 10 and 71.

FAC COMPONENT

Issue # and title: 42. Cultural heritage resource management and potential for infringement

Issue: Does the exemption provisions for the protection of resource features set up a situation where there may be infringement of aboriginal rights? And if so, does this conflict with provincial policy for consultations with First Nations?

GOVERNMENT COMPONENT

Analysis:
S. 76 includes provisions for exempting a forest licensee from the requirement to protect a resource feature; resource features include a cultural heritage resource that is the focus of a traditional use by an aboriginal people, and is not regulated by the *Heritage Conservation Act*.
Could the exemption provisions cause an infringement of aboriginal rights? And does this conflict with provincial policy?

S. 76 provides for an exemption under two circumstances:

- the licensee can on their own alter the vegetation, soil or terrain around a resource feature in a way that temporarily increases risk of subsequent damage to the feature if there is no other practicable option to carry out forest activities and either the alteration is minor or restored
- the minister may exempt the licensee if there is no other practicable option to carry out forest activities and the exemption is in the public interest.

The *Heritage Conservation Act* (HCA) protects specified cultural heritage resources from being damaged, altered or excavated. An exemption is provided through the issuance of a permit.

Before an exemption was to occur under either FRPA (or HCA), the Crown would fulfill its consultation obligations and where appropriate, would accommodate the First Nations interest that may be impacted. Provincial policy states that the province must consult with First Nations to determine aboriginal interests that may be impacted and where deemed appropriate, accommodate those interests that may be impacted before potentially infringing the aboriginal interest(s), and specifies the circumstances where there may be justifiable infringement.

Current status:

- Exemption provisions in FPPR remain; they are now located in s. 91(6) of latest draft. Provincial policy on First Nations consultation would apply to the application of these exemption provisions as they relate to cultural heritage resources.

FAC COMPONENT

Issue # and title: 43. First Nations review and comment provisions

GOVERNMENT COMPONENT

Current status:

- The FSP review and comment provisions in draft 6 of the FPPR have been changed to more closely resemble those in the FPC. The provisions are now addressed in s.21-23 of the latest draft of the FPPR.

- S. 22(1)(d) requires that reasonable efforts be made to meet with First Nations groups that may be affected by the FSP or amendments in order to provide opportunities to discuss the plan or amendment.

- S. 23 specifies how the licensee must respond to comments received, including those from First Nations groups.

Draft

PAC COMPONENT

Issue # and title: 44. Gaps and overlaps with Heritage Conservation Act

GOVERNMENT COMPONENT

----concern addressed in issue #41 above

Draft

Issue # and title: 45. 5-day "emergency" provision with respect to First Nation notification requirements.

Emergency provisions for public review and comment existed in the FPC, for example, to address need for expedited major salvage. These provisions have been carried forward in FRPA for FSPs.

See Issue #43 regarding requirements to make reasonable efforts to meet with First Nations groups affected by the plan or amendment. This needs to be viewed in context of the shortened time frame to address an emergency.

PAC COMPONENT

Issue # and title: 46. C& E and Effectiveness Evaluations

Regulation: N/A

Action: Longer term **Issue type**: Management philosophy

Issue: What are linkages between C&E and effectiveness evaluations?

GOVERNMENT COMPONENT

Analysis:

C&E is about whether the law has been complied with or not, and if not, what enforcement actions need to be taken. Effectiveness evaluations focus on whether the law, when complied with, meets government's intent (for example as expressed in objectives set by government).

An effectiveness evaluation charter (or framework) has been developed and will be distributed to PAC for review and comment at a later time.

Draft

Issue # and title: 47. Lack of draft wording for notification requirements

Current status:
Current draft of the *Forest Planning and Practices Regulation* now describes in Part 7 (sections 86-89) notifying and reporting obligations.

- S. 86 requires notification before commencement of timber harvesting or road construction.
- S. 87 specifies annual reporting requirements including status of roads, where harvesting occurred and areas reserved for wildlife trees, updating forest cover inventory, and silvicultural treatments.
- S. 88 includes requirement that a map be prepared that shows "standard units" (i.e. areas within a cutblock subject to same limits for soil disturbance and silvicultural requirements) and the requirements that apply.
- S. 89 requires that silvicultural treatment records be maintained over specified time period.

EAC COMPONENT

Issue # and title: 48. Notification and reporting, and data collection requirements.

GOVERNMENT COMPONENT

---similar to issue 47 above

Draft

PAC COMPONENT

Issue # and title: 49. Professional reliance – risk and liability

This was a major issue of discussion at PAC and needs to be developed. Key issues here is PAC concerns with potential wording of section 89 placing extraordinary constraints on statutory decision makers, and the degree of deference extended to professionals.

GOVERNMENT COMPONENT

Current status:

- Bracketed s. 89 in draft 6 of the FPPR has been deleted.
- Issue of deference can be addressed by the Minister when delegating authority to approve FSPs. The regulations now speak to delegation authority in s. 118-119 of the latest draft of the FPPR.

Draft

PAC COMPONENT

Issue # and title: 50. Professional reliance – lack of requirement to sign off plans

Regulation: Forest Planning and Practices **Sections:** 84-101
Also see Forest and Range Practices Act (FRPA) s. 5(3), 13(4), 33(2), 34(2) and 35(4)

Action: Monitor / follow-up required **Issue type**: Appropriate regulatory mechanism

Issue: *FRPA* and the draft regulations do not require that operational plans be signed by resource management professionals and there is concern that, as a result, plans may not be prepared by resource professionals. PAC is also concerned that the lack of a requirement for professional signature and seal is not consistent with the overall message of increasing reliance on resource professionals.

GOVERNMENT COMPONENT

Analysis:

- The legal framework for the *FRPA* regulates the relationship between government and licensees, but unlike many sections in the *Forest Practices Code of BC Act*, *FRPA* does not define or regulate the relationship between employers (licensees, government, consultants and others) and resource management professionals.
- Although *FRPA* is silent on the use of professionals, this does not imply their role is any way diminished. *FRPA* simply recognizes that other pieces of legislation state what activities can be done by, or what titles may used by which professionals and under what circumstances.
- Four professional regulatory bodies as it relates to *FRPA* are the Association of BC Professional Foresters, Association of Professional Engineers and Geoscientists of BC, BC Institute of Agrologists, and the new College of Applied Biology.
- Foresters, engineers and geoscientists have right to practice where activities and practices must be carried out by only members of those associations. If an individual who is not a member of the association were to carry out one of those practices, that individual's activities may be subject to an action (an injunction) brought by the professional association.
- The practice of professional forestry includes planning of forests, forest lands, forest resources and forest ecosystems.
- It is expected therefore that professional foresters will be involved in preparing forest stewardship plans, and that aspect of those plans will be addressed as well by other qualified resource professionals (e.g. biologists, engineers, geoscientists, agrologists)

Options:

1. Status quo. *FRPA* regulations only address relationship between government and licensee leaving Acts governing resource professionals to address relationship employers and professionals.
2. *FRPA* regulations specify what plans need to be signed off by what professionals.

Current status:
Option 1

PAC COMPONENT

Issue # and title: 51. Land use policy objectives

Regulation: Forest Planning and Practices **Section:** 1 "objective"

Action: Monitor / follow-up required **Issue type**: Appropriate regulatory mechanism

Issue: PAC is concerned that many Cabinet-approved land use plans are not being given legal status under the Code. The structure of the FRPA regulations renders the issue of higher level plan objectives highly important. Failing to implement approved land use plans can undermines public confidence in the land use planning processes and forest practices.

GOVERNMENT COMPONENT

Analysis:

Forest Stewardship Plans must be consistent with legal land use plan objectives also known as "higher level plan objectives" enabled under s. 3-5 of the Forest Practices Code. MSRM's intent is to transfer this authority to the Land Act.

- Higher level plan objective decisions have been made for Kamloops, Kispiox, Bulkley, and Lakes LRMPs, and for the Cariboo-Chilcotin, Vancouver Island and Kootenay Boundary regional plans.
- Portions of the Fort Nelson and Fort St John LRMP objectives are legally recognized in the *Muskwa-Kechika Management Area Act;* and remaining Fort St John LRMP objectives have legal effect through the *Fort St John Pilot Project Regulation.*
- Completed LRMPs without higher level plan objectives include Dawson Creek, Mackenzie, Fort St James, Vanderhoof, Kalum South, Cassiar Iskut Stikine, Prince George, Robson Valley, Okanagan Shuswap, portions of Fort Nelson, and special management zone decisions in Lower Mainland regarding spotted owl management.

Aspects of some land use plans have also been implemented by designations such as scenic areas and ungulate winter ranges.

There is no legal requirement for plans to be consistent with LRMP "policy" objectives that have not been translated into a legal objective. However, licensees can voluntarily include results or strategies in plans that are consistent with LRMP "policy" objectives provided they are not inconsistent with a "legal" objective. Even where licensees choose not to include results or strategies in forest stewardship plans, they may choose to honour the LRMP "policy" objective particularly where they were part of the LRMP process. LRMP policy objectives therefore may be adequately honoured voluntarily through non-legal mechanisms and this has proven to be the case for the most part in the Northern Forest Region.

Options:

1. Status quo. Assess need to legalize LRMP objectives on a "as needed" basis. Land use policy objectives may be implemented outside framework of law voluntarily by licensees for many areas of the province.
2. Make decisions more quickly on need for higher level plan objectives and implementing aspects of LRMPs that relate to objectives enabled under regulation.

Recommendation:

Option 1. Assess effectiveness.

RAC COMPONENT

Issue # and title: 52. Species mix at the landscape level

Regulation: Forest Planning and Practices **Section** (July draft): 20, 21, 22, 62, 63

Action: Monitor / follow-up required **Issue type:** Appropriate regulatory mechanism

Issue: Should regulations address tree species mix at the landscape level?

GOVERNMENT COMPONENT

Analysis of July draft:
In the draft FPPR there is no specific requirement to plant mixed tree species back on a stand nor to address tree species shifts at the landscape level. There is concern that landscape level species shifts may occur without a regulatory control. Forest health strategies under defined forest area management (DFAM) may prescribe species mix as a mechanism to reduce long term forest health risk. For example, moving from mixed spruce/pine forests to just pine might not be a prudent forest health strategy given susceptibility to mountain pine beetle attack as the stand matures.

The Code had site level controls on species mix but no landscape level controls. The site level controls may have been too rigid since species composition on many sites likely naturally vary over time due to nature and severity of natural disturbances.

Current status:

- Some of the requirements in the latest draft of the FPPR indirectly influence (encourage) a mix of tree species at the landscape level. For example, s. 126 lists factors that apply to stocking specification and these include the types of commerically valuable and ecologically suitable species that should be retained on the area. Measures that reduce forest health risks can include a mix of species.
-

Issue # and title: 53. Legal authority of LRMPs

--- concern address in issue #51

Draft

PAC COMMENT

Issue # and title: 54. Visual quality objectives (VQOs)

Regulation: Forest Planning and Practices **Section** (July draft): 71

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue: Many established scenic areas do not have VQOs – yet FRPA is predicated on plans being consistent with objectives. The "adequately manage and conserve" approval test under the existing Code (s. 41(1)(b) is not a test under FRPA. PAC is therefore concerned that scenic values may not be adequately conserved and appropriate visual quality may not be delivered unless government exercises its authority in a timely manner.

GOVERNMENT COMMENT

Analysis:

FRPA grandparents existing scenic areas and VQOs established under the Forest Practices Code. FRPA enables new scenic areas to be established by MSRM while MOF may establish VQOs for scenic areas. Currently, about 15% of scenic areas have VQOs. Under Code, scenic areas without VQOs must still be addressed in forest development plans as one of the plan approval tests is that resources be adequately managed and conserved.

Under FRPA there will be no requirement to provide results or strategies for scenic areas without VQOs in place. To address this potential "gap" in Code equivalency, a general (aspatial) provincial VQO order is being considered. The general provincial order would not apply to areas where area-specific VQOs are in place. The intent of the general provincial order is to capture the Code equivalency objective with respect to managing visual resource values.

If the provincial order were in place, the incentive for MOF to provide area-specific VQOs should be similar to current incentives under Code. MOF can either provide clear direction to licensees prior to development of plans, or they can allow the licensee's who prepare the plan to propose measures (results or strategies) to adequately manage visual resource values in scenic areas.

Under the Code, VQO classes (retention, modification, etc) are not defined by regulation but are addressed in policy documents. The draft FRPA regulations provide similar approach.

The general approach of FRPA is not to regulate government, so timetable to complete tasks enabled in regulation such as establishment of ungulate winter ranges or VQOs is not addressed in draft regulations.

Options:

Provincial (aspatial) VQO order

1. No provincial (aspatial) VQO order. No requirement for FSP to address visual values in scenic areas without VQOs.
2. Develop provincial VQO order to cover scenic areas without site-specific VQOs in place to ensure plans provide results or strategies for scenic areas similar to the Code

Defining VQO classes in regulation

A. Status quo. Don't define VQO classes in the regulation, rely on policy.
B. Define VQO classes in regulation

Current status:

Options 2 and A. S. 110 in latest draft regulations now addresses scenic areas and VQOs.

Issue # and title: 55 Lack of VQOs for backcountry areas

Regulation: Forest Planning and Practices **Section:** 71

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue: Scenic areas and VQOs may be needed in portions of BC's backcountry since some areas are key parts of BC's "supernatural" marketing image for tourism and support key commercial backcountry recreation operations. These operations help diversify local economies.

Analysis:
VQOs are restricted to scenic areas grandparented under the Code or established under FRPA by MSRM. Many scenic areas are established through the land use planning process where deliberate trade-offs are made between needs to provide for both a strong and viable tourism and forest sector (as well as address needs for other resource sectors and need to conserve environment values).

Most land use planning processes have focused visual resource management in areas most heavily used by the visitors and residents – such as along major travel routes. Some plans have identified key backcountry destinations as needing scenic area establishment.

Where scenic areas are designated in the backcountry, MOF can establish VQOs. An intended provincial (aspatial) VQO order is being contemplated under FRPA to ensure that Forest Stewardship Plans do address, through a result or strategy, visual values in scenic areas.

Options:
1. Status quo. The need for scenic areas in backcountry areas is the responsibility under FRPA of MSRM who will often make these determinations as part of the land use planning process.
2. Other?

Current status:
Option 1

FAIC COMPONENT

Issue # and title: 56. FSP approval and authority to request more information.

Regulation: Forest Planning and Practices **Section** (July draft): 89 and 90

Action: **Issue type:** Interpretation, clarity, definition

Issue: Can ability of MOF to request information under s. 90 influence plan approval decisions given s.89?

GOVERNMENT COMPONENT

Current status:

- S. 89 in draft 6 of the FPPR has been replaced. S. 118-119 in latest draft of the FPPR address the ability of the Minister to delegate decision-making authority and the kinds of direction that may be provided. This could include the issue of deference.
- S. 25 of the latest draft of the FPPR addresses the kinds of information that can be requested and ties this to factors used to prepare a result or strategy in order to provide consistency with objectives.

Draft

Issue # and title: 57. Site plans – level of detail concerns

Regulation: Forest Planning and Practices **Section** (July draft): 105

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue:
Many forest management issues are best addressed at the site plan level. For example, visual impacts in scenic areas often cannot be evaluated until one knows what the stand level prescription will be. Forest development units in a forest stewardship plan are too general to determine some impacts for some values. Site plans provide important information to help address site-specific concerns by other tenure resource users or First Nations. Yet because there is no approval of site plans by a statutory decision maker, there does not appear to be any mechanism to incorporate concerns or resolve disputes. It appears that all site level issues will be left entirely to licensee discretion, unless addressed by a forest practices requirement. Although site plans must be made available to the public, the regulation does not contain any detail about the content of those plans.

Analysis:
FRPA requires that a site plan be prepared prior to timber harvesting or road building. S. 10 in FRPA states the site plan must identify the approximate location of proposed cutblocks and roads, be consistent with the forest stewardship plan, and identify how results or strategies apply to the site. The site plan must be made publicly available on request. Site plans however are not subject to review and comment by the public or agencies and are not approved by MOF. There will be no compliance and enforcement of site plans since they are not approved by government, but site plans will likely be important to forest licensees as part of due diligence.

Prescribing detailed content requirements for site plans that are not reviewed or approved by government, or used in compliance and enforcement does not appear appropriate. Resource professionals can decide themselves the information needed to do a proper site plan.

The integration of some activities in some areas may benefit from review and comment of draft sites plans by First Nations or by other licensed resource users. Forest licensees could decide to share draft site plans for review and comment in some situations as a voluntary measure or they may decide to commit to doing so in some situations as a legal "strategy" in the forest stewardship plan. Parties who may feel affected by site plans can provide comments to that effect when reviewing a draft forest stewardship plan. Forest licensees will have to address these comments.

Options:
1. Status quo. Site plans are available for public viewing. The issue of review and comment of site plans in some situations or areas can be addressed in forest stewardship plans. No detailed site plan content requirements will be specified in regulation.
2. Other?

Recommendation:
Option 1. Latest draft of FPPR now addresses Site Plan content in s. 36. The content requirements specified in regulation have changed relative to draft 6. The current requirements address stocking standards and soil disturbance limits that apply to standard units, and need to retain Site Plans.

PAC COMPONENT

Issue # and title: 58. Stocking standards and non-timber values

Regulation: Forest Planning and Practices **Section** (July draft): 21 and 22

Action: Responded **Issue type:** Appropriate regulatory mechanism

Issue: Can legal or policy prompts allow for consideration of non-timber values such as forage for livestock and wildlife, and First Nations traditional uses, when developing stocking standards?

GOVERNMENT COMPONENT

Analysis:

S. 21 requires that stocking standards substantially capture timber growth potential within the limits set by objectives for non-timber values. FPPR provide objectives for wildlife, cultural heritage values, biodiversity which may be used to modify stocking standards.

There are no forage objectives for livestock, however, should the reciprocity considerations in s. 92 apply to range tenure holders, this would allow for consideration of the impacts that may adversely affect their rights (such as crown range values).

Current status:

- The objective set for timber has substantially changed in current version of FPPR relative to draft 6. The objectives are now in s. 6 and are intended to provide broad direction for timber. A test for silviculture stocking standards for this objective occurs in s. 27 which addresses how the Minister will consider stocking standards. S. 27 refers to the management assumptions (such as through Timber Supply Review) that pertain to the area which include non-timber values.
- S. 28 deals with "balancing objectives" and is where the approval of stocking standards must balance the stocking standards in s. 27 with other objectives for non-timber values.

PAC COMMENT

Issue # and title: 59.Species mix at the landscape level

GOVERNMENT COMMENT

--- addressed in issue #52

Draft

EAC COMPONENT

Issue # and title: 60. Forest health/timber health definitions

GOVERNMENT COMPONENT

-----addressed in issue #15

Draft

Issue # and title: 61. land use policy objectives

----addressed in issue #51

PAC COMMENT

Issue # and title: 62. Plan approval should it result in violation of health and safety requirements.

GOVERNMENT COMMENT

-- see issue #8

Draft

FAC COMMENT

Issue # and title: 63. Plan approval test – balance concerns

GOVERNMENT COMMENT

Current status:

- The requirement to balance objectives when providing FSP results and strategies is addressed in s. 28
- Bracketed s. 89 in draft 6 of the FPPR has been replaced. S. 118-119 in latest draft of the FPPR address the ability of the Minister to delegate decision-making authority and the kinds of direction that may be provided. This could include the issue of deference and also how best to consider the balancing of objectives.

PAC COMPONENT

Issue # and title: 64. Cumulative effects of Forest Stewardship Plans

Regulation: Forest Planning and Practices **Section** (July draft): 94

Action: Responded **Issue type**: Interpretation, clarity, definition

Issue: Several tenure holders operating on the same area may cause cumulative impacts where some individually FSPs can achieve objectives but collectively they can't

GOVERNMENT COMPONENT

Analysis:

S. 94 addresses the issue of cumulative impacts by allowing MOF to assign proportional objectives to forest licensees.

Current status:

- This wording on cumulative effects is unchanged in latest draft of FPPR but now found in s. 20.

Draft

RAC COMMENT

Issue # and title: 65. Forest development units

Regulation: Forest Planning and Practices **Section** (July draft)**:** 85, 86

Action: Responded **Issue type:** Appropriate regulatory mechanisms

Issue: Forest development units (FDUs) in FSPs identify the area within which forest activities such as harvesting and road building can occur. There is concern that FDUs may be so general as to not allow for meaningful public review and comment.

GOVERNMENT COMMENT

Analysis: The specificity or generality of FDUs are likely to vary depending on the nature of the issues. Where issues or concerns require more detail, FDUs may be more similar to proposed cutblocks and roads as shown on forest development plans. Where issues or concerns do not require detail, FDUs may be general areas in order to allow the forest licensee to do subsequent site planning and respond to market conditions.

Options:

1. Status quo. Retain the flexibility of FDUs in regulation where licensee can determine the level of detail that needs to be shown in order to facilitate meaningful public consultation.
2. Amend regulation by being more prescriptive.

Current status:

Option 1. Section 12 in the latest version of FPPR now address FDUs.

FAC COMMENT

Issue # and title: 66. Declared areas

Regulation: Forest Planning and Practices **Section** (July draft): 84 and 85

Action: Responded **Issue type**: Interpretation, clarity, definition

Issue: What are declared areas?

GOVERNMENT COMMENT

Analysis:

Declared areas are intended to duplicate under FRPA the limited planning protection that the present Code affords under s. 21 of the Operational and Site Planning Regulation (i.e. Category A cutblocks). Declared areas provide a licensee with some certainty of future harvest opportunity, and provide an inventory of area for which a licensee could apply for a cutting permit at any time, for example, in response to market needs.

Current status:

- Declared areas are addressed now in s. 12(5) and 24(2) in the latest draft of the FPPR. The intent has not changed relative to draft 6.

Draft

Issue # and title: 67. Public review and comment provisions by persons "affected" by the plan

Regulation: Forest Planning and Practices **Section** (July draft)**:** 103

Action: Responded **Issue type**: Interpretation, clarity, definition

Issue: Why distinguish between persons interested versus affected by the plan with respect to public review and comment?

Analysis:
Revised s. 103 distributed at last PAC mtg makes a distinction between persons interested in the plan versus those whose rights may be affected by the plan with respect to obligations for review and comment. There are also intended to be special obligations with respect to providing review and comment opportunities for First Nations.

Licensees must make the plan available to the public interested in the plan during normal business hours at the location specified in the notice.

Licensees must make the plan available to persons potentially affected by the plan commensurate with the nature and extent to which their tenure rights could be affected.

Other tenure rights that may be affected by the plan could result in direct financial impacts and so it is assumed that extra efforts are needed to ensure review and comment and address concerns.

Current status:
- S. 19 in the latest draft FPPR enables the Minister to specify to licensees what other agreement holders are potentially affected by the FSP where the plan needs to specify measures to manage potential material adverse effects on the rights under the potentially affected agreement.
- S. 22(1) in latest draft FPPR states that review and comment opportunities to potentially affected agreement holders specified in s. 19 need to be commensurate with nature and extent to which the person's rights under the agreement are affected.

PAC COMMENT:

Issue # and title: 68. Potential lack of ability to consider public input at plan approval.

PAC concern raised about ability of regulations to provide statutory decision maker with authority to consider public input when approving forest stewardship plans.

GOVERNMENT COMMENT:

Current status:

- Opportunities for public review and comment in the current version of FPPR (now in s. 21-23) now more closely resemble those provided in the FPC (than occurred in draft 6). This should provide more certainty to both industry and the public who are familiar with FPC obligations. Public comments that are relevant to FSP approval tests can be considered by the designated decision maker (e.g. Are results and strategies consistent with government objectives? Does FSP include measures that manage adverse affects on other tenured resource users where the Minister specifies the agreement holders that must be considered?). Public comments that do not relate to any FSP approval consideration can not be considered by the designated decision maker when making an approval decision, however licensees may voluntarily decide to address some of these comments.

- Draft 6 of the FPPR had a 'bracketed' s. 89 where results or strategies proposed in a FSP must be accepted unless the designated decision maker could demonstrate they were unreasonable. This section has been removed in the latest version of the FPPR. The issue may be addressed by the Minister in s. 118 (under Part 11 of the draft regulation that covers delegation). The FPC provided for independent statutory decision-makers (often the district manager). FRPA provides instead delegated decision maker model where the Minister may delegate his/her authority with direction. The intent is promote more consistent decisions across the province. Part 11 (s. 118-121) provides the regulatory authority for delegation and providing direction.

Issue # and title: 69. Plan approval test – balancing objectives

----see issue # 63

Issue # and title: 70. Section 89 in draft 6 of FPPR

Current status:

- Draft 6 of the FPPR had a 'bracketed' s. 89 where results or strategies proposed in a FSP must be accepted unless the designated decision maker could demonstrate they were unreasonable. This section has been removed in the latest version of the FPPR. The issue may be addressed by the Minister in s. 118 (under Part 11 of the draft regulation that covers delegation). The FPC provided for independent statutory decision-makers (often the district manager). FRPA provides instead delegated decision maker model where the Minister may delegate his/her authority with direction. The intent is promote more consistent decisions across the province. Part 11 (s. 118-121) provides the regulatory authority for delegation and providing direction.

Issue # and title: 71. PAC on-going and future training needs

Action: longer term

Current feedback:

- The Minister agreed with PAC's draft recommendation that there be a commitment to FRPA training beyond March 31, 2003. He strongly committed that there will be on-going FRPA training opportunities past March 31st. He felt training should be on-going with opportunities to get feedback and improve delivery to meet the needs of clients. He acknowledged the challenge in doing this with limited staff and resources, but it was simply too important not to do.

Issue # and title: 72. Localized features and woodlot regulations

---- Addressed in issue # 1

Issue # and title: 73. Definitions vary across some of the regulations

Current status:

- Efforts have been made to have standard definition of terms between the various regulations that support FRPA.
- In some cases it was felt better to focus a term used in one regulation to be more relevant to the needs of another regulation – which has caused slight differences in the definitions of some terms. For example, "resource features" is defined similarly in the FPPR and WPPR, but a more streamlined definition is used in RPPR as it is believed to be more relevant or applicable for range tenure holders given the nature of their activity.

Issue # and title: 74. Non-industrial use of forest roads: safety and notification

Regulation: Forest Planning and Practices **Sections** (July draft): 106-119

Action: Responded **Issue type**: Interpretation, clarity, definition

Issue: Forest road and bridge design and relationship with public use safety. Notifying the public and other tenured resource users who use forest roads when the are intended to be deactivated so that they are not surprised.

Discussion:
The standards for forest road and bridge design in the Act and regulations are intended to ensure it is structural sound and safe for use by the industrial users who are building the road (s. 106). Considerations also include the length of time the road is expected to be used for industrial use (s. 108) and requirements to protect environmental values (e.g. bridges or culverts are to allow for safe passage of fish). Public use of forest roads is addressed in s. 22.2 of the Act. Public use is without charge but may be restricted or closed if use could cause significant damage to road, cause sediment delivery or endanger property, public health or public safety. For example, roads may be closed during active logging and hauling, or when fire hazard conditions are considered extreme.

In sum, forest roads are not designed to accommodate public use, but public use can occur. For example, forest roads are not designed to accommodate sports cars, but their condition may allow a truck to pass safely. Normally, the design of the forest road to accommodate large hauling trucks and forest workers will be of a standard that will be safe for the public who use an appropriate type of vehicle. Public users of forest roads need to decide themselves whether use of the road for their type of vehicle can be done safely.

Roads are normally deactivated if they are no longer needed for the industrial activity for which they were built and the costs of maintaining the road exceed the costs of deactivation. A new wilderness road standard was introduced which should lessen maintenance costs associated with not deactivating a road. This was need in light of budgetary constraints to maintain roads and need to allow for rustic public use.

Non-industrial users of forest roads may be surprised and inconvenienced to find a recently deactivated forest road. Notification requirements to water licensees with respect to roads in community watersheds are addressed in s. 119. Notification requirements in general to government are to be addressed in s. 120.

Current status:
- S. 83 and 84 in latest version of FPPR addresses road deactivation.
- S. 84 (1) requires that a sign must be erected prior to commencement of road deactivation activities containing information sufficient to warn users of the deactivation.
- S. 87(2)(b) requires licensees to provide MOF with a report that describes the location of the road that has been deactivated.
- Potential users of forest roads can contact the licensee who holds the road permit the current status of the road with respect to public use; this may be important to do anyway to avoid use of roads when active hauling is occurring.

Issue # and title: 75. Culverts and peak flows

Current status:

- The latest draft of the FPPR now addresses the issue in s. 75. The wording is essentially the same as with draft 6.

Issue # and title: 76. vicarious liability

Current status:

- Sections of the Act such as s. 106 refer broadly to the liability of persons (not necessarily just licensees) to government. A key change in FRPA therefore is the increased liability for individuals including contractors and operators, while still retaining liability on the part of licensees. This is a shift in the forest management framework reflected in the Act itself.
- Loggers and other forestry contractors must be aware of their responsibilities, operating rules and regulations to protect themselves from liability and show that they followed a process of due diligence. For example, if a road building contractor disregards directions in a road plan regarding a stream crossing and the fish stream is degraded, then the contractor may be found liable and subject to penalties. On the other hand, if a contractor follows the plans and in the process of harvesting, damages an unmarked stream, the professional who prepared the plan, the licensee and the contractor may all be liable for the damages. The professional preparing the plan may also be found negligent for not identifying the forest resource in the plans.

Issue # and title: 77. Road and preventative maintenance

Current status:

- s. 73 in latest draft of FPPR addresses need for roads to be structurally sound, and safe for use by industrial users.
- It is believed that this requirement should address safety of other road users who operate vehicles suitable to the condition of the forest road; common sense needs to be applied by road users in this regard.
- The wording in latest draft regulation is similar to those in draft 6.

Issue # and title: 78. Tourism/ industry agreement with respect to roads

- offer to discuss forestry and tourism issues like this off-table was made as had happened between range and forest operators on common issues

Issue title: Due diligence and assessments

Issue: The current Forest Practices Code requires some assessments be undertaken in situations specified in the Act or regulations. The Forest and Range Practices Act does not require in law that assessments be undertaken but does require that results or strategies be specified in a Forest Stewardship Plan. S. 72 in the new Act provides for defences such as due diligence should results or strategies not be achieved. Are defences appropriate given construct of FRPA and draft regulations?

Discussion:
Under the current Code, some assessments must be undertaken. For example, a terrain stability field assessment must be undertaken prior to harvesting or road building on potentially unstable terrain. The forest development plan must specify that it is or will be consistent with the recommendations provided in the assessment. Once the plan is approved, compliance and enforcement action is with respect to whether the recommendations were carried out NOT if whether a forest development induced landslide occurred or not.

In the draft Forest Planning and Practices Regulation, a practice requirement in s. 16 is that forest development must not cause a landslide. If this result is not achieved (that is, a forest development induced landslide occurs), compliance and enforcement action can be initiated. The burden of proof rests with the forest licensee to establish a defence under s. 72 of the Act. A forest licensee who has had a terrain stability field assessment undertaken by qualified professional, and who followed the recommendations in the assessment, are likely to be able to claim due diligence as a defence. A qualified professional who undertakes an assessment considering best mgt practices guidance, such as the revised terrain stability field assessment guidelines being developed by the Association of Professional Engineers and Geoscientists, will likely meet the professional obligations of the association.

Bona fide non-compliance under the Code and FRPA not only is an issue with respect to potential fines (which are increasing under FRPA) but is also a concern in terms of corporate image and certification. For these reasons, it is expected that forest licensees will want to be duly diligent and therefore will undertake assessments where they are warranted.

Front-end advise through best mgt practice (BMP) policy advice is likely to be a strong feature of FRPA outside the legal framework to support issues of due diligence and professional accountability. It is expected over time that current Code guidebooks will be re-visited and if still needed developed into appropriate BMPs. The BMPs would ideally be developed collaboratively by the "expert" community that includes professional associations, stakeholders, industry, academia, government and others (e.g. First Nations with respect to cultural heritage values).

In sum, the shift with FRPA is to no longer regulate "how to's" or rules such as requiring field assessments but to shift regulation emphasis to achieving outcomes specified in practices requirements or in results specified in operational plans. Licensees are then accountable for achieving the outcomes or results. If appropriate action is taken (such as undertaking assessments and following the advice of a qualified professional) yet the outcome or result is not achieved, licensees can provide that evidence in proposing a due diligence defence.

Issue: Confusion between goals and objectives

Analysis:
To assist land use planning tables in writing goals, objectives and strategies, a document "Writing Objectives and Strategies" was prepared and widely circulated a few years ago. The document was prepared by MOF with support from other agencies, and following discussions with stakeholders. The intent of the document was to address the confusion that existed when using these terms in the context of land use planning. Objectives were defined as terms that should be measurable wherever possible and spatially explicit. Goals were a more broadly stated outcome statement for resource values.

The document however was not prepared with intent to provide guidance for outcome statements for the entire province in support of results based code.

FRPA has used the term "objective" for objectives set by government under s. 149 of the Act to be more like goal statements (as defined in the document above). This triggers the requirement for the Forest Stewardship Plan to propose measurable results (or strategies) that are consistent with the objectives. This was done in response to criticism that there not be a "one shoe fits all approach" to results in a results based code (i.e. that a top-down measurable provincial outcome for a value would be inappropriate given the province's ecological and social diversity).

In response to that concern, FRPA defined objectives set by government qualitatively with provisions that licensees must propose measurable (and enforceable) results consistent with these s. 149 objectives.

Objectives set by government through land use plans (currently called higher level plans) and objectives enabled by the regulation for ungulate winter ranges, wildlife habitat areas, scenic areas, etc however can be measurable and will be more spatially explicit.

Issue: can requirements for preparing orders be a standalone regulation

Current status:

- Regulatory requirements for preparing orders is addressed in Part 10 (s. 114-117) in latest draft of FPPR